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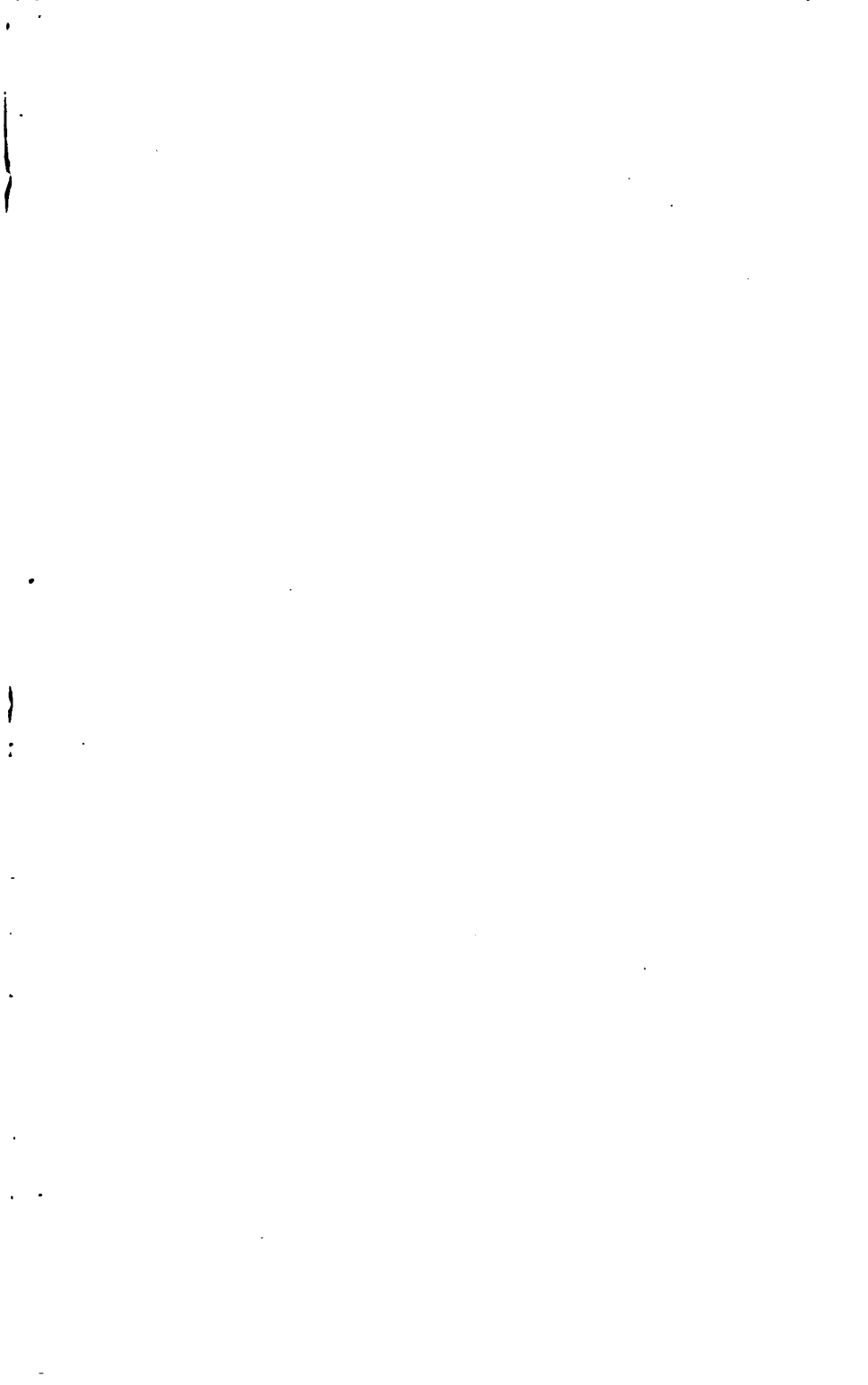


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Transvaal (Colony) Laws, Statutes, &c.
Commercial Law.

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THE COMPANY

AND

COMMERCIAL LAWS

OF THE

TRANSVAAL.

WITH EXPLANATORY NOTES AND INDEX,

COMPILED BY

MANFRED NATHAN, LL.D.,

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Common Law of South Africa," etc.

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Johannesburg :
THE TRANSVAAL LEADER,
Printers and Publishers.

1905.

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Rec. June 2, 1905.

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PREFACE.

THIS book is a compilation of the principal Statutes relating to commercial matters in the Transvaal. Its main object is to provide an Index which shall constitute a means of ready reference to subjects which are constantly dealt with in daily business. Full Explanatory Notes (based on decided cases) are given with regard to the important problems of Insolvency and Company Law, and Carriage of Goods. It has not been thought necessary, in regard to Patents, to set out the extensive rules governing the Patent Office.

EXPLANATORY.

By § 17 of the Interpretation of Laws Proclamation (No. 15, 1902) the terms hereinafter set forth, when they occur in any Law of the late South African Republic (*i.e.*, passed prior to the British occupation in May, 1900), shall be read and taken to read and mean as follows:—

“South African Republic,” “State” or any like expression shall be taken to read and mean “the Transvaal Colony.”

“State Attorney” shall mean the Attorney-General of the Transvaal.

“State Secretary” or any like expression shall mean the Colonial Secretary.

“State President” or any expression denoting the Head of the late South African Republic shall include the Governor or the Lieutenant-Governor of the Transvaal.

“Landdrost” shall mean Resident Magistrate.

“*Staatscourant*” shall mean the *Transvaal Government Gazette*.

In Proclamations passed prior to July, 1902, the words “High Court” denote the present Supreme Court of the Transvaal.

TABLE OF ABBREVIATIONS.

- A. C. R.—Buchanan's Reports of the Cape Appeal Court.
B.—Buchanan's Reports of the Cape Supreme Court.
C. L. J.—Cape Law Journal.
C. T. R.—*Cape Times*' Reports.
E. D. C.—Buchanan's Reports of the Cape Eastern District's Court.
F.—Foord's Reports of the Cape Supreme Court.
G. W. R.—Lawrence's Reports of the High Court of Griqualand West.
J.—Juta's Reports of the Cape Supreme Court.
K.—Kotzé's Reports of the Transvaal High Court.
K. & B.—Kotzé and Barber's Reports of the Transvaal High Court.
M.—Menzies' Reports of the Cape Supreme Court.
N. L. R.—Reports of the Natal Supreme Court.
O. R.—Official Reports of the Transvaal High Court.
R.—Roscoe's Reports of the Cape Supreme Court.
T. H.—Reports of the Witwatersrand High Court.
T. S.—Reports of the Transvaal Supreme Court.
S.—Searle's Reports of the Cape Supreme Court.

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PART 1.—PROCEDURE.

A.—INSOLVENCY.

LAW No. 13, 1895.

CHAPTER I.

Sequestration and its Consequences.

1. Any person who shall be desirous of voluntarily surrendering his estate as insolvent for the benefit of his creditors may apply by written petition to that effect to the High Court or a Circuit Court.

2. Such petition may be made:—

- (a) On behalf of the estate of any person who is absent from the Republic, by anyone who is duly authorised by power of attorney to administer such estate.
- (b) On behalf of the estate of a deceased person, or of a person who is legally or actually incapable of managing his own estate, by anyone who is lawfully charged with the management thereof.
- (c) On behalf of the estate of any partnership, by the majority of the partners present or represented in the Republic.

NOTES.

(a) In *Ex parte Van Eden, N.O.* (2 O.R. 361) the Court granted a petition for voluntary surrender of an absentee's estate, made by the holder of his general power of attorney.

(b) In *Ex parte Farrelly's Executor* (not yet reported) the Witwatersrand High Court granted an application for surrender of the estate of a deceased person, made by his executor.

3. Any person who intends to file a petition as above referred to shall cause due notice of his intention to be published not less than three times in the *Staatscourant* and in a local newspaper, if there is one, at least twenty-one days before the hearing of the application, mentioning the date upon which and the place where the application will be filed, and he shall further lodge at the office of the Master of the High Court at Pretoria, or if he resides outside the limits of that district, then also at the office of the Landdrost of the district under whose jurisdiction he resides, or of the Special Landdrost of a public diggings, a statement of his affairs, and all such schedules, statements, accounts, and other documents as may be deemed necessary for the purpose and support of his application.

The aforesaid statement and other documents shall lie for the inspection of creditors at all times during office hours for a period of fourteen days from the date of the first publication of such notice in the *Staatscourant* as hereinabove provided.

No voluntary surrender of an estate as insolvent shall be accepted until proof shall have been given to the satisfaction of the Judge or of the Court that the provisions of this section have been complied with, and that there are sufficient funds or assets to cover the preliminary costs of sequestration.

NOTE.

The provisions of this section, requiring that the publication of notices of intention to surrender shall take place at least 21 days before the date fixed for making the application, apply to all the three publications referred to in the section—not to the first one alone (*Ex parte Morris* [1903], T.S. 877).

4. From and after the publication of any notice in the *Staatscourant* as above, it shall not be lawful to sell any property of the estate to which such notice relates, attached under any writ of execution or other process in the nature of an attachment, except by order of the Court aforesaid.

The proceeds of any property already sold under legal process shall remain in the hands of the Sheriff or other officer of the law charged with the execution of such legal process, and shall not be paid out by him unless by order of the aforesaid Court.

NOTE.

In *Nelson & Co. vs. Whiting* (4 E.D.C. 322) the Cape Eastern Districts Court ordered the sale of property attached in execution to be proceeded with, notwithstanding notice by the debtor of his intention to surrender, where it appeared that the debtor was not acting *bonâ fide*, and had delayed to file his schedules at the Magistrate's office for inspection.

5. It shall be lawful for the said Court, upon such application being made, to institute an enquiry, and for that purpose to direct the petitioner, and such other persons as to the Court may seem fit, to appear before it.

And the Court may likewise direct such petitioner to appear before a Commissioner appointed by the Court and thereunto duly authorised, who shall be competent to direct the petitioner and such other persons as to him may seem fit to appear before him to be examined, and who shall make out and transmit to the Registrar of the High Court a report of such examination.

6. When such Court after enquiry, or on considering the report of any such Commissioner, is of opinion that there are valid grounds for accepting the surrender of such estate, it shall thereupon grant an order for the sequestration of such estate for the benefit of the creditors in general.

7. It shall also be lawful for the Court aforesaid, upon the petition of a single creditor whose claim is not less than £50, setting forth valid reasons, or upon the petition of two or more creditors so petitioning upon a claim jointly of not less than £100, no matter whether such claims are due or not at the time of the application, to grant an order placing the estate of any such person under provisional sequestration, upon the ground that he has committed an act of insolvency, or upon any other ground which to the Court may seem fit.

NOTE.

An order for compulsory sequestration was granted, where the grounds relied upon were that a debtor had sent a circular to his creditors offering to assign his estate, and alleging that if this offer was refused he must surrender it (*Rubidge and others vs. Foxcroft*, 9 E.D.C. 134).

8. Any person shall be deemed to have committed an act of insolvency :—

- (a) If, having any property, whether movable or immovable, personal or real, within this Republic, he shall depart therefrom, or being out of this Republic shall remain absent therefrom, or shall depart from his dwelling-house, or otherwise absent himself with the intent, by any of these acts, to evade the payment of his debts.

- (b) If, having against him the sentence of any competent Court, he being thereunto required, shall not satisfy the same, or shall not point out to the officer charged with the execution thereof sufficient disposable property to satisfy the same.
- (c) If he shall make any alienation within this Republic or elsewhere, or if he mortgage or pledge any of his goods or effects, with the intent thereby to prejudice his creditors in their rights, or to prefer one creditor before another.

NOTES.

(a) In *Hansen, Schrader & Co. vs. Krogmann* (Transvaal Supreme Court, 1904, not yet reported) the Court granted an order sequestrating the estate of an absent debtor. But in *Barkhuysen vs. Van Huysten* (1 J. 26), where a person had left the Cape Colony 27 years before, leaving debts still unpaid, and was still out of the Colony, compulsory sequestration of his estate on those grounds was refused. The Court said that where the debt was of many years' standing, the defence of prescription might be set up, and further pointed out that it was not clear that the debtor had left the Colony with intent to delay or defeat his creditors.

(b) This order is the one ordinarily granted when a debtor makes a *nulla bona* return to a writ of execution (*Mears vs. Nel*, 9 C.L.J. 249). The words "being thereunto required, shall not satisfy the same," constitute a distinct act of insolvency, and have no connection whatever with the clause "or shall not point out," which is another act of insolvency (*In re Webster*, 3 M. 220). The writ of execution must be on a judgment still in force, and no order of sequestration will be granted on a return to a writ for a superannuated and unrevived judgment (*Brink vs. De Lima*, 3 M. 304).

A debtor cannot oppose an application for compulsory sequestration, where he owes a creditor £550, on the ground that he (the debtor) has received an offer to purchase certain immovable property owned by him for £600, which sum is payable at 3, 6, and 12 months. In such a case, if the creditor holds the title deeds of the property, the Sheriff is entitled to make a return of *nulla bona*, provided there are no other assets in the estate (*Porter vs. Roberts' Executors*, 2 J. 286). The creditor, if he has obtained a judgment, is entitled to be satisfied at once; and so is any ordinary creditor, where no credit has been given, or there is no agreement to postpone payment.

(c) A debtor had drawn up schedules for the surrender of his estate, but had not signed them. His principal creditor, knowing this, induced him to withdraw the schedules, and to transfer what was virtually his whole estate to him to satisfy his debt and the debts of some other creditors. No sequestration took place. The transaction was held to be a fraud on the creditors not included in this arrangement, and was accordingly set aside under the Common Law as a fraudulent alienation (*Loescher vs. Pelser, Kruger & Co.*, 9 E.D.C. 195).

The Court has no power to sequester the estate of an un-rehabilitated insolvent (*Ex parte Worthington* [1904], T.S. 47).

9. Every petition as aforesaid shall be filed in Court in writing, and shall be accompanied by :—

- (a) An affidavit in writing from every petitioning creditor of the cause of his claim and the justice thereof.
- (b) A certificate from the Master of the High Court, or from the Landdrost of the district in which he resides, or from the Special Landdrost of a mining area where his petition has been filed, that he has given security to the satisfaction of the said official for the payment of the necessary fees and charges for the prosecution of the said sequestration until the choice or appointment of a trustee.

NOTE.

(b). The security to be filed is the sum of £25, which is deposited with the Master or the Resident Magistrate.

10. The creditor or creditors upon whose petition any order of sequestration shall be made, shall, at his or their own cost, prosecute all the proceedings in the said sequestration until the election or appointment of a trustee.

The said trustee shall reimburse such costs after they have been taxed by the Master of the High Court to the said creditor or creditors out of the first moneys that shall be received from the estate.

NOTE.

In a Cape case (*Du Preez vs. Botes' Trustee*, 2 J. 386) it was decided that this preference for costs applies to the case of a voluntary sequestration in the same way as to compulsory sequestration. "They are not treated as ordinary debts due by the insolvent, but as part of the costs of sequestration, and as such are payable by the trustee."

11. Upon granting a provisional order for the sequestration of any estate, the Court shall at the same time grant a rule *nisi*, upon the return day of which the debtor shall have to appear to show cause, if any, why a final order for the sequestration of his estate shall not be granted.

The above rule shall be served upon the debtor in the usual way.

If, however, the debtor has been forty days absent from his usual place of residence or business within the Republic, copies of the said rule shall be affixed upon the outer door of the High Court, and at the same time published in the *Staatscourant*.

NOTE.

The practice of the Transvaal Courts since 1902 has been to require the original petition to be served on the debtor, with notice of the application, before the day when the rule *nisi* is applied for, in cases where there is no return of *nulla bona*.

12. The said Court shall, upon the day of hearing, receive proofs of the matters in the aforesaid petition set forth, and adjudge thereon, whether the said debtor has appeared to answer the rule or not.

The Court may, upon application of the debtor, anticipate the day, due notice thereof having first been given to the petitioning creditor or creditors.

The Court may also, when sufficient reasons appear, delay the said adjudication for any reasonable time.

NOTE.

In *Drummond vs. Marillac* (1 J. 2) an application was made for compulsory sequestration. The debtor opposed this, and applied for a postponement of the matter, on the ground that he was bringing an action against the petitioning creditor, formerly his partner, which, if successful, would act as a set-off to what was due to the creditor. In this action the debtor stated he was also claiming damages for fraud in business transactions, and for perjury alleged to have been committed by the creditor. Both these charges had been made in an action between the parties, wherein judgment was given for the creditor. The Court now decided that the former action had put the questions of fraud and perjury out of dispute, and refused to postpone the sequestration.

It must be clearly proved to the satisfaction of the Court that the petitioning creditor's debt amounts to £50. In *Fletcher & Co. vs. White* (16 J. 276) the creditor alleged that the respondent was indebted to him in an unsatisfied judgment for £26 6s. 10d. for goods sold, and £30 17s. 6d. for moneys lent and advanced. In April, 1899, the creditor sent a letter of demand to the debtor for £56, but afterwards sued him for only £26 6s. 10d. The Court held that "the fact that only £26 was sued for would, in the absence of any satisfactory explanation, lead to the inference that the claim for the additional £30 could not be substantiated," and refused the order for sequestration.

13. Whenever any petitioning creditor fails to appear or to prove his claim, or the act of insolvency wherewith the debtor is charged, to the satisfaction of the Court, it shall be lawful for the Court to set aside such provisional order of sequestration and dismiss the petition, or to require further proof of the matters therein set forth. In the former case all matters and questions relating to the estate shall revert to their original position, and be determined as if no petition for the sequestration of the estate had ever been presented.

NOTE.

It is only incumbent on the petitioning creditor to prove the amount of the respondent's debts, and it is for the respondent to prove the amount of his assets, if he alleges that they are sufficient for the discharge of his debts, and the applicant (the creditor) is not under the necessity of proving the insufficiency of the assets for that purpose (*Simpson & Co. vs. Fleck*, 3 M. 217).

As stated above (§ 8), the refusal of the defendant to point out property in satisfaction of an illegal writ, and of a judgment which could not at the time be legally enforced, is no act of insolvency (*Brink vs. De Lima*, 3 M. 304).

14. Whenever it shall appear to the Court that the petition was unfounded and vexatious, it shall be lawful for the Court to allow the said debtor, on his application for leave to do so, forthwith to prove any damage alleged to have been by him sustained by reason of the provisional sequestration, and to award him such compensation as the Court shall deem fit, or to leave him to his action for damages.

15. It shall be lawful for the Court, if and after any order for the provisional sequestration of any estate has been set aside on the ground that the claims of the petitioning creditor or creditors were insufficient, or in consequence of the consent or the default of the petitioning creditor, or his collusion with the insolvent, upon the application of any other creditor who has fulfilled the requirements of the law, to order that the said sequestration shall be revived and continued with all the consequences and effects thereof as if such order had never been set aside: save only that every alienation, payment, acquittance, surrender, or discharge made by the insolvent, and every hypothec or pledge by him executed between the time of the setting aside of the order for the sequestration and the time of the making of the order reviving the sequestration, shall be judged of and decided upon the like ground as if such order for revival were an original order for sequestration.

NOTE.

No payment, pledge, or mortgage, voluntarily made and constituted to or in favour of a creditor at a time when either creditor or debtor knows that the debtor is insolvent, *in satisfaction of a debt then due and claimable by the creditor*, can, in respect of such knowledge, and of its being the voluntary act of the debtor, be set aside as fraudulent, except where made or constituted at a time when another creditor or other creditors have had recourse to such proceedings for recovering their debts as in law to make them be deemed equally vigilant with the creditor to whom the payment is made, or in whose favour the pledge or mortgage is constituted. A bond creditor who has given notice calling up his bond is not, especially before expiry of the term of notice, equally vigilant with a creditor who has obtained judgment, and sued

out a writ of execution on such judgment (*Neethling vs. Blommestein's Trustees*, 3 M. 276; *In re Dusing*, 1 M. 480). These cases were decided under the old Cape Insolvent Ordinance (No. 64, 1828).

16. If any debtor against whom any order for provisional sequestration has been made shall give or deliver to any creditor who obtained the same any satisfaction or security for his debt or any portion thereof, whereby the latter shall obtain more than he would be entitled to receive if the sequestration had been proceeded in, with the intent thereby to secure the assistance of such creditor in the setting aside of the order for sequestration, he shall be held to have committed a new act of insolvency.

Every creditor so receiving such satisfaction or security shall, in the event of the sequestration being afterwards proceeded in, on petition of any other creditor in manner hereinbefore mentioned, deliver up the said security and repay the said excess over what he ought to have received for the benefit of the estate to such person as the Court shall appoint.

He shall, in addition, pay all the costs incurred for obtaining the revival of the said sequestration, and he shall forfeit the whole of his claim against the estate.

NOTE.

See note to § 8 (c), above.

17. And it shall be lawful in like manner, and upon due observance of the previous provisions, on a petition of one or more creditors, setting forth valid grounds for the same, to place under sequestration the estate of any partnership in consequence of any act of insolvency committed by one or more of the partners, or upon any other ground that to the Court may seem sufficient.

And independently of such sequestration, it shall be lawful for the creditors of any individual partner to proceed against the separate estate of any such partner in the ordinary manner, for the amount of the debt due to him personally.

NOTES.

Where there is a dispute as to whether a debt is due by a partnership or by an individual partner, it lies on the petitioning creditor to show that he is a creditor of the partnership (*Mocke vs. Peacock & Co.*, 4 J. 62).

An act of insolvency committed by one partner of a firm in his capacity as partner justifies the sequestration of the partnership estate, without proof that all the partners have committed acts of insolvency or have all made voluntary surrender (*In re Phillips*, 3 M. 210).

Where a partnership estate has been surrendered, and it is sought to sequester the estates of individual partners, such individual partners must be called upon in the ordinary way to show cause why their estates should not be sequestered (*In re Benjamin*, B. 1875, p. 117).

A member of a partnership firm gave promissory notes bearing the signature of the firm, and discounted these notes. He applied the proceeds to his own use. With intent or in such manner as to defeat or delay the creditors of the firm he allowed the holders of the notes to obtain provisional sentence thereon, and to attach the partnership assets. This was decided to be such an "alienation" within the meaning of the 4th section of the Cape Insolvent Ordinance (or § 8 (c) of the Transvaal Law) as to amount to an act of insolvency by the partnership (*Anderson & Co. vs. Hutton & Co.*, B. 1875, p. 73).

18. And it shall moreover be competent for the Court to include in the same order for sequestration as well the separate estate or estates of any partner or partners of any company as the joint estate of such company.

In this case the creditors of the separate estate or estates, and of the estate of the partnership respectively, shall be equally entitled to vote in the election of trustees, and in all matters relating to the said estates. The trustees shall, however, be bound to keep separate the administration and settlement of the joint and separate estates, as hereinafter prescribed.

NOTE.

See *Mocke vs. Peacock & Co.*, referred to under § 17.

19. And it shall be lawful for any creditor or creditors of the estate of any person deceased, or of any person legally or actually incapable of the administration of his estate, in like manner, and upon due observance of what is hereinbefore provided, to have such estate placed under sequestration as insolvent, on the ground that the person in whom the administration of the estate is legally vested committed an act of insolvency, or upon any other ground which to the Court aforesaid may seem sufficient.

NOTE.

An execution debtor committed suicide after the seizure of certain of his goods in execution of a judgment of the Cape Supreme Court. By the Cape Ordinance 104, 1833, § 31 (which is identical with § 46 of the Transvaal Proclamation No. 28, 1902), only the issuing out and not the subsequent progress of a writ of execution against a deceased person is barred. It was decided that, as the estate of the deceased had not been declared insolvent, the sale in execution must be proceeded with for the benefit of the execution creditor (*Du Toit and De Waal vs. Heydenrych*, 11 J. 197).

20. Every partner in a partnership, and every person legally charged with the administration of the estate of any person deceased, or of any person legally or actually incapable of the administration of his estate, shall have the same rights and liabilities in respect to the claims of any such partnership, or any such estate against any other estate placed under sequestration, as is granted to and imposed upon any creditor by virtue of the provisions of this Law. The joint partners, however, of any partnership, and any persons in whom the joint administration of any estate is vested as aforesaid, shall be entitled to one vote only, and shall be considered as one person.

21. The party obtaining an order for sequestration, whether such order be granted in respect to his own estate, or in respect to the estate of his debtor, shall immediately lodge the same with the High Sheriff of the Court, at his office in Pretoria, or with the Deputy Sheriff of the district in which such order has been granted.

22. And the Deputy Sheriff shall enregister the said order, and note thereon the day and hour of its production, and shall immediately transmit the same to the High Sheriff at his office.

The High Sheriff shall enregister every such order lodged with him, or received by him from the Deputy Sheriff, and note thereon the day and hour in which it was lodged or received, and shall immediately deliver the same to the Master of the High Court.

The Master of the High Court shall cause such order to be published in the *Staatscourant*.

23. Every insolvent obtaining an order for sequestration upon his own petition shall, within eight days after the granting of such order of sequestration of his estate as insolvent, transmit to the Master of the High Court a list containing, to the best of his knowledge and belief, the names and places of abode of his several creditors.

24. And the Master of the High Court shall, by the High Sheriff, or by his subordinate, or by any messenger of the Court, thereafter to be appointed, enter and lay an attachment upon every estate placed under sequestration, and make an inventory thereof.

It shall be lawful for the creditor upon whose petition an order of sequestration has been obtained, or any person authorised by him, to be present at the framing of the inventory aforesaid.

When the estate has been sequestrated upon the voluntary surrender of any insolvent, it shall be lawful for any of the creditors to be present with the messenger while framing the inventory aforesaid.

25. It shall be lawful for the officer charged as above with the attachment of any property, to secure any movable article belonging to the estate by sealing up any chamber, closet or repository, provided he cause no unnecessary hindrance or inconvenience to any party by so doing, or to appoint some person in custody thereof.

When such person, however, leaves such goods in the possession of the person possessing them at the moment of attachment, he shall leave with the latter person a copy of the inventory, together with a notice that the property therein specified has been attached by him by virtue of an order for sequestration.

This notice shall also contain a statement of the penalty provided under Article 150.

The said officer shall forthwith report his execution of the attachment as aforesaid to the said Master.

26. The legal effect of every order of sequestration shall be that the custody of the estate placed under sequestration passes over to, and shall be legally vested in, the Master of the High Court, until such time as the appointment of a provisional trustee has been made, or until the final election and confirmation of such trustee.

The Master of the High Court shall, for the time being, in respect to any estate placed under sequestration, have the same powers and shall be subject to the same duties as are given and imposed upon the trustee elected by the vote of the creditors, in accordance with the provisions of this Law.

NOTES.

VESTING OF THE ESTATE.—If a person sells his immovable property to another, for which the seller receives the purchase price, and the seller thereafter becomes insolvent before effecting transfer of the property to the purchaser, the ownership of the property becomes vested in the Master of the Supreme Court, and ultimately in the trustee, for the benefit of the creditors. The purchaser then has a personal claim against the estate for damage sustained by non-fulfilment of the vendor's undertaking to perfect the sale by making legal transfer, and for restitution of the price. For such claim he is entitled to be ranked concurrently with the other personal creditors of the vendor, but has no right of preference whatever (*Harris vs. Buissinne's Trustee*, 2 M. 105). In such a case, where no transfer has been given, though the title deeds of the property have been handed over to the purchaser,

the latter is bound to restore the title deeds to the trustees on the vendor's insolvency (*Kellar's Trustees vs. Edmeades*, 3 J. 25). If, however, the seller has not the *dominium*, or full ownership, of landed property, but a mere right to claim transfer of the land from a third party, and thereafter, before receiving transfer, sells the land, or, in law, his right to the land, the purchaser from him of such right is entitled, on the vendor's subsequent insolvency, to claim transfer from the vendor's trustee, inasmuch as the personal right which the vendor had to claim transfer was sold by him to the purchaser before the vendor's insolvency (*Van Aardt vs. Hartley's Trustees*, 2 M. 135).

The completion of a building contract by an insolvent, after insolvency, is for the benefit of his creditors (*Thomson Brothers & Co. vs. Cumming and Nourse*, 3 M. 249).

The trustees of a factor, upon his insolvency, are not entitled to retain, as against the factor's principal, goods which the latter can trace to have been consigned by him to the factor, to be sold by the latter as factor, which at the date of insolvency are in the factor's possession. The property of the consignor forms no part of the factor's estate. If the factor has sold goods of the principal, and has taken bills in his own favour in payment, which remain in the factor's hands at the date of sequestration, the principal is entitled to these bills to the extent of the balance remaining due on account of the proceeds of the goods consigned to him and not paid, or remitted for before the insolvency. The principal's rights are not affected by the fact that the factor has credited the principal with the price of the goods, as sold, in his books, or by an agreement that the factor should receive a *del credere* commission, or by the stating of an account-current between the principal and the factor, or by an action brought by the principal for the balance of such account-current before the surrender of the factor's estate (*Chiappini & Co. vs. Jaffray's Trustees*, 2 M. 192; *Russouw's Trustees vs. Becker*, 2 M. 199).

If a debtor is sued, and tenders a certain amount in satisfaction of the claim, which he pays into Court, such money, on judgment being given for the creditor, belongs to him, and does not vest in the debtor's trustees upon the debtor's subsequent insolvency (*De Roubaix's Trustees vs. Breda's Curator*, B. 1876, p. 196).

The interest of certain property was left by will to a person during his lifetime, and the will provided that on his death the property was to go to other persons. He became insolvent. It was decided that the interest of the inheritance vested in his trustees, and that the insolvent was not entitled to any portion of the interest for his maintenance (*Hiddingh's Trustee vs. Colonial Orphan Chamber*, 2 J. 273; *Zeeđerberg vs. South African Association*, 2 J. 431).

27. During the period which shall intervene between the time of the granting of the order for the sequestration and the making of the order confirming the liquidation account and the final plan of distribution, the insolvent, so long as he shall not have been rehabilitated (except in the certain cases to be hereinafter mentioned), shall be absolutely incapacitated to acquire or possess as against his trustee, or as against any other lawful administrator

of his estate, any property whatsoever, whether movable or immovable, personal or real, or any right to any such property: or to alienate, mortgage, or pledge any property belonging to the estate, so as to bind his trustee or other lawful administrator of his estate.

Neither shall it be lawful to attach such estate or any portion thereof during the period aforesaid.

NOTES.

VESTING OF THE ESTATE.—See the cases mentioned under § 26.

FOREIGN INSOLVENCY.—The trustee of a foreign bankrupt, duly appointed in accordance with the law of the bankrupt's domicile, is recognised as such in the Transvaal, and is entitled to all the bankrupt's goods found in the Transvaal (*Ex parte Celliers*, 2 K. 102; *In re Hope*, K. & B. 25; *In re Zeederberg*, 5 S. 307).

DEALINGS DURING INSOLVENCY.—After the sequestration of his estate, and before the confirmation of the liquidation account, an insolvent who had no leave to trade paid money to and discounted promissory notes belonging to his estate with the Standard Bank, in the name of a nominal partnership, but really in fraud of his insolvent estate. Having thus obtained credit from the Bank, he drew cheques against it, which cheques the Bank paid. It was decided that the dealings of the insolvent with the Bank were void, and that the Bank had no defence against the claim of the trustee to recover the property of the estate received by the Bank (*Davis' Trustee vs. Standard Bank*, 5 E.D.C. 48).

If, during his insolvency, and before the confirmation of his final account, an insolvent purchases landed property, and mortgages the same in security of moneys advanced to pay off the purchase price, his trustees, if they claim the property as having vested in the insolvent estate, are bound to take it subject to the mortgage upon it (*In re Magodas*, 2 M. 344; *Warner's Trustees vs. Wicht*, 4 J. 463).

EFFECT OF FOREIGN INSOLVENCY.—A foreign order of sequestration has, *per se*, no effect upon immovable property of the insolvent situated in the Transvaal. But the Supreme Court has the power, acting upon grounds of comity, to recognise and give effect to such an order in respect of such property. This power is in the absolute discretion of the Court, and will only be recognised in cases in which no prejudice can be entailed to Transvaal creditors (*Ex parte Stegmann* [1902], T.S. 40). See also *Leslie's Trustees vs. Leslie* ([1903], T.S. 839).

28. And during the aforesaid time the insolvent shall in no wise be able to bind himself, except with the consent in writing of his trustee, or other lawful administrator of his estate.

Provided always that any insolvent shall be competent to pass a valid title in pursuance of any alienation as above provided, while acting so far as he shall be authorised in writing so to do as the mandatory or agent of his trustee, or other lawful administrator of his estate, or with the written consent of the latter as the mandatory or agent of any other person by whom he shall have been authorised in writing so to do.

The insolvent shall likewise be entitled, for the support of himself and of his family, to carry on any trade, and to this end effectually to deliver to any person movable goods or effects in pursuance of any real and *bonâ fide* sale for a just price duly paid, or to pass title to any money paid by him in cash for any matter or thing purchased by him: provided always that his trustee or other lawful administrator of his estate shall be able to claim from the said insolvent for the benefit of the creditors, if necessary by legal process, any profits made by him by means of such trading, not strictly necessary for the support of himself and his family.

He shall also be entitled to receive and sue for, in his own name, the wages or reward of his work and labour, or that of any of his family, or any pension granted for work or service already performed, or so much thereof as the Court shall adjudge.

The insolvent shall also be entitled to exact damages claimable by reason of any insult or any personal injury done to such insolvent or any member of his family. All moneys paid to him in this wise, and all goods purchased by him with such moneys, shall be for his personal use, and remain free from the control of his trustee or other lawful administrator of his estate.

Any policy of life insurance by him *bonâ fide* effected for the benefit of his wife or children at least two years before the granting of any such order of sequestration, shall be excluded from the sequestrated estate, and, saving all lawful rights obtained thereto by third persons, be reserved to the insolvent.

NOTES.

If an insolvent acquires property and carries on business without obtaining his rehabilitation, a creditor who has proved at the time of the insolvency, but received no dividend, may apply to the Court for an order of attachment against the insolvent's property subsequently acquired, under § 143 of the Transvaal Law, so long as the insolvent's estate has not been rehabilitated (*Bartholomew vs. Stableford*, 17 C.L.J. 68).

If the creditors in an insolvent estate pass a resolution authorising the trustee to sell landed property in the estate at his discretion, such property may lawfully be sold to and purchased by the insolvent, who will be liable to repay the purchase price after his rehabilitation (*Gie vs. Weels*, 1 R. 215). The insolvent, before his rehabilitation, cannot, without such a special resolution of creditors, purchase and acquire any property belonging to his insolvent estate (*Beyers' Trustee vs. Piton & Beyers*, 2 J. 373).

An insolvent performed certain work and labour for a Syndicate, the result of which was the sale of certain claims on terms very advantageous to the Syndicate. The Syndicate obtained the greater

portion of the purchase price in shares, of which 500 were given to the insolvent as remuneration for his work. His trustee applied, before confirmation of the insolvent's account, for an order restraining him from disposing of the 500 shares; but it was held that the insolvent was entitled to retain the shares as against his creditors (*Hall's Trustee vs. Hall*, 6 J. 190).

If a trustee gives an insolvent written leave to trade in his own name, the trustee cannot claim any property acquired by the insolvent by virtue of such leave to trade (*Grady's Trustee vs. Grady*, 8 J. 279). In this case the creditors did not join in claiming, but the Court held that the trustee was estopped from claiming by his written leave.

With the proceeds of his work and labour an unrehabilitated insolvent, who had not obtained leave to trade, acquired certain shares, which he sold, receiving a promissory note for the price. He was held entitled to provisional judgment against the purchaser on the note, the trustee making no claim to the shares or money. The Court decided that the purchaser could not shelter himself behind the trustee's rights, if any (*Stewart vs. Burling*, 7 J. 1).

A debtor surrendered his estate, but no creditors proved under the sequestration, and no trustee was elected. Some ten years later the debtor bought for his own use goods at plaintiff's shop, for which he obtained credit. On being sued for the price, the debtor pleaded his previous insolvency in bar. This was held to be no defence, inasmuch as an insolvent is liable for necessities bought for his own use (*Macfarlane vs. Brunette*, 13 J. 272).

The trustee of an insolvent estate cannot claim, as part of the assets of the estate, letters patent obtained by the insolvent for an invention made by him since his insolvency (*Boose's Trustee vs. Boose*, 9 J. 467).

29. The execution of all judgments against the insolvent or his estate shall be suspended from and after the time of the granting of any order of sequestration duly lodged at the office of the High Sheriff or any of his deputies, and for as long as the sequestration shall continue.

If any insolvent shall be imprisoned by reason of any order of civil imprisonment, he shall upon petition to the High Court, or to any Circuit Court to that effect, be discharged from such imprisonment, unless the Court decide otherwise.

Any property belonging to the insolvent under attachment in the execution of any judgment as above, or the proceeds thereof, shall be returned to the sequestrated estate.

NOTES.

In case of voluntary surrender, the Sheriff cannot, after the debtor has given notice of intention to apply for surrender, pay over the proceeds of an execution sale without an order of Court, pending the result of the application to surrender (*In re Buys*, 5 E.D.C. 247). But the Court will order a sale in execution to proceed, where the debtor is not acting *bonâ fide*, and delays to file his schedules for inspection (*Nelson & Co. vs. Whiting*, 4 E.D.C. 322).

If a debtor, who is detained under an order of civil imprisonment, surrenders his estate, the creditor who imprisons him must have notice of any application for the debtor's release (*In re Schenk*, B. 1876, p. 8).

30. Any creditor in whose behalf a judgment as hereinabove stated has been obtained, shall be entitled to prove his debt and the costs by him incurred in obtaining such judgment upon the sequestrated estate.

He shall be entitled on the distribution of the estate to a preference on all goods attached in manner as aforesaid, or the proceeds thereof, for the costs of the writ of execution and the execution of the same, but not for the amount of the judgment debt, or of costs of suit by him incurred before the suing out of such writ of execution.

31. And all actions pending against any insolvent for any debt provable against his estate, and all proceedings therein, shall, upon any order being made for the sequestration of such estate, be stayed.

And it shall be lawful for the plaintiff in any such action to prove his debt, together with the taxed costs of suit incurred up to that time against the sequestrated estate.

All actions pending against the insolvent for damages alleged to have been sustained by any injury or personal wrong, or breach of any contract committed by him, such damages being still unascertained, or for the recovery of any claim unliquidated as to its amount, and all proceedings therein, shall, upon any order being made for the sequestration of his estate, be stayed until a trustee shall be elected for the administration thereof, and thereafter may be proceeded with against the latter.

The judgment awarded by the Court, together with the taxed costs of suit, shall be a debt provable against the sequestrated estate.

NOTES.

A plaintiff claimed a debt due to him by a deceased person from the executors of the latter. The Cape Supreme Court referred the matter to the Master, and, when that official reported favourably, gave judgment for the plaintiff. It afterwards came to the notice of the Court that pending the report of the Master the estate of the deceased was surrendered as insolvent by his trustees. The Court thereupon declared that the judgment in favour of the plaintiff, obtained after the surrender, was null and void, as the effect of § 23 of the Cape Ordinance (identical with § 31, above) was that the Court had no power to give judgment after the date of surrender, the action against defendants in their capacity as executors being terminated by the surrender (*Norden vs. Norden's Executors*, 3 M. 316).

It must, however, be noted that the mere fact that the estate of a defendant, who has a Colonial domicile as well as an English one, has been sequestrated in England, is no bar to an action against him in the Transvaal (3 E.D.C. 304).

22. Any action commenced by any insolvent for any debt or demand due to the said insolvent's estate, and all proceedings therein, after an order of sequestration has been made, shall be stayed until a trustee shall have been elected.

The trustee shall make election to prosecute or discontinue the action which has been begun within six weeks after having been called upon by the defendant in any such action so to do, or otherwise shall be deemed to have lost his right to the same.

The insolvent shall, however, remain competent to continue in his own name, and for his own benefit, any action commenced by him previous to his insolvency for any injury or personal wrong done to himself or any of his family.

Any damages which may be recovered in any such action shall not be considered to belong to the sequestrated estate.

33. Every alienation of, or any mortgage or pledge of any portion of his estate, made or confirmed by the insolvent at a time when he might (reasonably) have expected the sequestration of his estate, shall, unless the same shall have been made *bonâ fide* and for lawful consideration, be null and void.

Whenever the effect of any such act as hereinabove stated shall be to cause an excess of liabilities over assets, then the same, to the extent to which such excess shall have been thus produced, shall be null and void.

NOTES.

Contemplation of sequestration denotes expectation of insolvency, and not merely the probability of a future sequestration. Consequently, a payment made by a debtor at a time when he was already hopelessly insolvent, but before he contemplated the sequestration of his estate, does not constitute an undue preference (*Daly's Trustees vs. Rocher*, H. 106).

The same rule applies to a company which goes into liquidation. The fact that a company, which is charged in an action with granting an undue preference, granted a mortgage upon its unissued capital within six months before being placed in liquidation, in order to be rescued from financial difficulties in which it suddenly became involved, is no proof in itself that the company at that time contemplated liquidation. If a mortgage bond is attacked on the ground that it constitutes an undue preference, regard must be had to the circumstances and to the time when it was agreed to give a mortgage (*Liquidators Republican Loan Co. vs. Natal Bank*, O.R. 1894, pt. 4, p. 99).

In an action under the 83rd section of the Cape Insolvent Ordinance (corresponding to § 33, above), to set aside an alienation of property made before insolvency, it is for the plaintiff to prove that at the time of the transaction challenged the insolvent's liabilities fairly calculated exceeded his assets fairly valued, and then the onus is upon the person upholding the transaction to show *bonâ fides* and just and valuable consideration (*McLeod's Trustees vs. Benjamin*, B. 1877, p. 152).

If a party purchasing property from an insolvent actually pays a fair price for it, thereby showing his *bonâ fides* and valuable consideration, the Court will ordinarily refuse to set aside the transaction (*Smith's Trustees vs. Smith*, F. 106).

An intended husband and wife, before marriage, entered into a sale of land valued at £400, the wife taking over a mortgage on the land for £300, and paying £36 interest thereon, the price thus being £336. Transfer of the property to the wife was only passed a year after the marriage, when the value of the property had increased to over £600, and when the husband's debts fairly calculated exceeded his assets fairly valued. An action was brought by the husband's trustees against the wife to have the transfer set aside as null and void. The Court held the sale to have been made *bonâ fide*, for just and valuable consideration, and at a time when the husband was not in insolvent circumstances. It was decided that the mere fact that formal transfer was not passed till shortly before the insolvency, and at a time when his liabilities exceeded his assets, would not work a cancellation of such transfer, as it was *bonâ fide* passed in completion of the previous sale (*Cilliers' Trustees vs. Cilliers*, 13 J. 68).

34. Every alienation of any part of his estate, and every payment made by any insolvent to any creditor, and every mortgage or pledge made by him for the benefit of any creditor on any portion of the estate, in the ordinary course of trade, although such insolvent might at the time reasonably have expected the sequestration of his estate, shall *primâ facie* be held and taken to have been made or given *bonâ fide*, and as having been made without intention to prefer such creditor.

It shall be necessary for the trustee seeking to set aside any such transaction to show such an intention to prefer on the part of the insolvent.

NOTE.

To protect a transaction by § 86 of the Cape Ordinance (corresponding to § 34, above), it must be shown to have taken place in the usual and ordinary course of trade or business, as among men of business and repute in the commercial world; and it is not enough to show that in the village in which the parties carried on their business such transactions were common, or that as between themselves they had had similar dealings before (*Du Plooy's Trustee vs. Plewman*, 7 J. 332).

“What is ‘the usual and ordinary course of trade or business’ within the meaning of § 86? It is, I apprehend, that which is suitable to the nature of the particular business, and might reasonably and probably, and in ordinary course, have taken place without reference to a contemplated sequestration” (*Tucker vs. Austen's Trustees*, B. 1868, p. 167).

35. Every payment obtained by any creditor before the making of the order of sequestration, whereof proof shall have been made that such payment has been obtained or facilitated by the fraudulent assistance of the insolvent, or by collusion with the insolvent, who while he might (reasonably) have expected the sequestration of his estate, intended thereby to give such creditor a preference above the other creditors, shall be null and void.

36. All acquittances or discharges of any lawful debt, or of any security for any lawful debt or other matter, payment or satisfaction of which has not been actually and *bonâ fide* received, granted by any insolvent at a time when he might (reasonably) have expected the sequestration of his estate, having the effect to prejudice his creditors, shall be null and void.

In every case in which the person accepting from the insolvent any such acquittance or discharge had knowledge, or might reasonably have suspected that the effect would be to prejudice the creditors of such insolvent, such person shall be bound not only to make good such debt, but also to pay the trustee in addition for the benefit of the creditors the value of the amount unlawfully remitted to him.

37. Every alienation of any part of his estate, and every payment made by an insolvent to any creditor, and any mortgage or pledge made by such insolvent in favour of a creditor upon any part of his estate or effects, at a time when he might (reasonably) have expected the sequestration of his estate, with the intention to benefit such creditor, directly or indirectly, in preference to his other creditors, constitutes an undue preference, and shall be consequently null and void.

Every alienation made by the insolvent as above, and every mortgage or pledge passed by him in favour of any person whatsoever as above, with the intention thereby to prefer one of his creditors, directly or indirectly, above the others, shall constitute an undue preference, in so far as such creditor is thereby actually so benefited.

The trustee shall be entitled to demand and recover the amount or value of such undue preference from the creditor so benefited, or from any other person.

NOTES.

By this section, the question of intention, in making an alienation or payment, is left open, to be determined upon all the circumstances and facts of the case, by the Court or a jury, as well with respect to

pressure by a creditor to induce a debtor to give security to him in preference to the general body of creditors, as in other respects (*Smith vs. Carpenter*, B. 1869, p. 206). This section does not require that, in order to constitute a fraudulent preference, the transaction should be voluntary.

In actions of undue preference it is necessary to state the exact section of the Law on which the claim is founded (*Du Toit's Trustee vs. Wege & Bosman*, B. 1869, p. 135). A declaration to set aside a bond as an undue preference must specifically aver "expectation of sequestration" when the challenged bond was given (*Pocock's Trustees vs. Harris's Executors*, B. 1869, p. 153).

The delivery of assets by a debtor in difficulties and unable to meet his liabilities, shortly before the sequestration of his estate, to a creditor, is not such an undue preference in favour of such creditor as to be null and void under the 84th section of the Cape Insolvent Ordinance (corresponding to § 37, above), where such delivery was not made in contemplation of sequestration (*Stratford's Trustees vs. Mosenthal & Co.*, B. 1874, p. 65).

"If the creditor takes a bond, or receives payment of his claim when the debtor is clearly on the verge of insolvency, and the insolvent contemplates that the giving of the security or the payment will inevitably result in sequestration, then the law steps in and says, not that it is necessarily a fraudulent act, but that it is an undue preference" (*De Wet's Trustees vs. Krynauw & Co.*, B. 1879, p. 179).

Even if the trustee fails to set aside a sale as null and void under § 33 (above), he may yet succeed in establishing that the transaction is an undue preference under § 37 (*Smith's Trustees vs. McCaig*, F. 108).

In actions of undue preference, in order to answer the question whether or not the insolvent contemplated sequestration, the Court looks at the whole of the evidence, and carefully considers all the circumstances under which the challenged payment was made. If these circumstances lead to the irresistible conclusion that the contemplation did exist, the Court would attach little weight to the insolvent's denial of such a contemplation. But the words of the Cape Ordinance "contemplating sequestration" do not mean "being in such a position that you ought to contemplate sequestration." The question of "contemplation" is a question of fact, to which an answer must be found in the evidence or in such reasonable inferences as may be drawn from the evidence (*Goosen vs. Goosen's Trustee*, 1 A.C.R. 414).

The words "contemplation of sequestration" in § 84 of the Cape Ordinance mean "expectation of sequestration" (the words used in § 27 of the Transvaal Law), and there can be no undue preference, unless at the time the insolvent made payment he expected the sequestration of his estate, and made the payment in view of insolvency with the intention of preferring the creditor to whom payment was made (*Hugo's Trustee vs. Lindenburg*, 2 J. 184).

If a woman, married by ante-nuptial contract, reserving to her free control over her property "as fully and effectually as if no marriage had taken place," chooses to lend her husband money to assist him in his business or otherwise contracts with him, she can claim no greater rights upon his insolvency than any other creditor with whom he has dealt; and if she receives payments from him at a time when he contemplated the sequestration of his estate and intended to prefer her before his other creditors, the payments thus made will be set aside as an undue preference (*Rupert's Trustees vs. Rupert*, 4 J. 22).

With regard to actions for undue preference, as also in other insolvency proceedings, it must be noted that "it is not the creditors who should sue on behalf of the estate, or for any injury done to the estate, or for any fraud committed upon the estate, but it is the trustee who should sue" (*S.A. Bank Trustees vs. Wilson*, 4 J. 172).

In actions under this section, "if the Court is of opinion that the insolvent did not pass the bond, to use the language of Lord Cairns in *Thorburn vs. Steward* (3 L.R., P.C., 518), 'in the view and in the expectation of a supervening bankruptcy, and in order to disturb what would be the proper distribution of assets under that bankruptcy,' the Court would still have to find that there was no undue preference. The question of contemplation still remains, as was decided in *Goosen vs. Goosen's Trustee*, 'a question of fact to which an answer must be found in the evidence and in such reasonable inferences as may be drawn from the evidence'" (*S.A. Loan Co. vs. Cape of Good Hope Bank*, 6 J. 188).

A Resident Magistrate's Court has jurisdiction in actions for undue preference under § 37, if the case falls within his ordinary jurisdiction in other respects (*Gie vs. Le Roux's Trustee*, 10 J. 253).

If the trustee declines to take action to set aside as an undue preference a bond in respect of which proof has been made, an objecting creditor will be allowed by the Court to take such action on condition that he is personally liable for costs (*Pienaar's Trustee vs. Pritchard*, 10 J. 381).

Some time before his insolvency an insolvent pledged certain goods for an advance of money. Subsequently, shortly before his sequestration, and at a time when he was hopelessly insolvent, he handed certain carts to his creditor, to be sold by him. The proceeds were to be devoted to the debt. The proceeds of the carts were considerably in excess of the value of the stock pledged. An undue preference was held to exist to the extent of the difference between the value of the carts and the value of the pledged goods returned to the insolvent (*Van der Westhuizen's Trustee vs. Steyn*, 12 J. 313).

The taking shortly before the sequestration of a promissory note for a due debt is not of itself an act of undue preference (*In re Du Toit*, 16 J. 416).

38. Every alienation of any portion of the estate, and every payment made by the insolvent, and every mortgage or pledge passed upon any portion of his estate at a time when the insolvent might (reasonably) have expected the sequestration of his estate, and with the intention of thereby benefiting any person who would otherwise have become liable, either in the character of a surety, or in any other character by law analogous thereto, for such amount, shall constitute an undue preference.

The trustee shall be entitled to claim and recover from the person so preferred the amount or the value of such undue preference.

39. No benefits *bonâ fide* given by any person under any duly registered ante-nuptial contract, to wife or children, shall become null and void by reason of the sequestration of the estate of such person, save and except when the order of sequestration of his estate shall be made within a period of two years after the registration of such contract as aforesaid, and it shall be proved that at the time of the execution of the said ante-nuptial contract the said person was actually then in an insolvent condition; in which case such benefits shall be null and void, and they shall be claimable and recoverable by the trustee of any such estate for and on behalf of such estate. In every ante-nuptial contract registered before the taking effect of this Law, the period of two years as hereinabove stated shall commence from the date of the taking effect of this Law.

NOTES.

A husband by ante-nuptial contract settled property on a trustee for the benefit of himself and his wife, and after their death for the benefit of the children of the marriage. On the insolvency of the husband, the trustee in his estate was held entitled to the usufruct only of the property during the joint lives of the spouses, and the life of the survivor; and it was held that the children of the marriage would be entitled to the *dominium* in the property after the death of the survivor of the spouses (*Brown vs. Dary*, 12 C.L.J. 138).

A husband by ante-nuptial contract settled a sum of money on his wife, to be paid to her out of his estate as a preferent charge upon it on his death or insolvency. If, however, his wife predeceased him the money was to revert to and form part of his estate, and be disposed of by him in whatever manner he pleased. During his and her lifetime and his insolvency the said sum was to remain in his possession and under his control for the benefit of both of them. The husband became insolvent, and the wife claimed as a concurrent creditor. It was held that the claim could not be sustained, but that it might be admitted as a contingent claim, payable if she survived her husband (*Leigh's Trustee vs. Leigh*, 1 J. 75).

40. Every alienation of any part of his estate, and every payment, acquittance or discharge made by any insolvent of any lawful debt, or of any security of such debt, or any other matter or thing whatsoever belonging to the estate, and every mortgage and pledge by him executed on any part of his estate, after the making of the order of sequestration and before the confirmation of the final plan of distribution of the estate, shall be null and void, save and except in so far as the insolvent was thereunto justly entitled by virtue of the provisions of § 28.

NOTES.

In *Loescher vs. Pelser, Kruger & Co.* (9 E.D.C. 195), the whole of the property in an insolvent estate had, by arrangement between the insolvent and one of the creditors, been applied to pay one or two

favoured creditors to the exclusion of others. The debts were too small to enable the estate to be submitted to compulsory sequestration. The Court decided that the alienation was in fraud of creditors under the Common Law.

See the cases referred to in the notes to § 28 of this Law.

41. Every payment or satisfaction made to any insolvent, by or on behalf of any person who was the debtor of such insolvent, after the making of an order for the sequestration of the insolvent's estate, shall be null and void: unless the person making such payment or satisfaction shall have done so *bond fide* and without knowledge of such sequestration.

42. It shall be lawful for any person who has sold or delivered, or caused to be sold or delivered, to any insolvent any matter or thing, whether movable or immovable, personal or real, when such sale has been effected without determining any fixed period before the expiration of which the purchase price should not be payable, or with an express or tacit agreement that the purchase price shall immediately be paid or payable, to claim and recover such matter or thing out of the sequestrated estate, provided written notice of such claim shall have been made within a period of twenty-one days after delivery of the goods or property.

After the expiration of the aforesaid period, such claim for recovery may only be founded upon an act of fraud committed against him by the purchaser.

Any person having sold and delivered any such matter or thing upon credit, in the manner as hereinabove mentioned, shall not be entitled to have such sale cancelled, or to claim the purchase price from the trustee or any other lawful administrator of the sequestrated estate; the latter shall retain possession of the goods thus sold and delivered for the benefit of the estate.

NOTES.

If the price of an article, not sold and delivered on credit, is not paid, the dominion in the thing sold remains with the seller, and may be vindicated by him, as above stated, within 21 days after delivery. If the goods sold are claimed within the 21 days, subject to the conditions stated in § 42, the seller will have a preference on the insolvent estate to the extent of the proceeds of the goods in question, if sold (*Commissioner for the Sequestrator vs. Vos*, 1 M. 286).

43. Leases, or agreements to enter upon any lease or leases, undertaken and entered into by any insolvent, shall not lapse or be determined by any order of sequestration granted against his estate.

The trustee of such estate shall be bound, within a period of six weeks after the confirmation of his election as such trustee, to decide, in consultation with the creditors of such estate, whether he will adopt and carry out such leases or not, and in default of any such action on the part of the trustee they shall be held to have determined. The lessor or any other person making such contract may in every case summon the trustee before a competent Court for the recovery of the rent due up to the period of the cancellation or determination of such lease, or for any damages he shall prove to have sustained by reason of the non-performance of such lease or agreement of lease.

The trustee shall also have the right, as against the lessor or any other person making such contract, to summon such lessor or person before a competent Court for the recovery of the amount and value of the improvements made upon such property so leased before the sequestration.

NOTES.

By § 104 of the Cape Ordinance, differing in this respect from § 43 of the Transvaal Law, the lessee's insolvency terminates the lease absolutely.

If a person first mortgages his land to one party, and then leases it to another, the proper course for the trustee, on the mortgagor's insolvency, is to offer the land for sale provisionally subject to the lease, and if the offer is not sufficient to cover the mortgages, then to sell the land free from the lease (*Dreyer's Trustee vs. Lutley*, 3 J. 59; *Reed's Trustees vs. Reed*, 5 E.D.C. 23).

An insolvent had bound himself, before his insolvency, as the lessee of a piece of land for a term of years, to effect improvements to the property, in consideration of a reduced rental, and had effected such improvements. His estate was held entitled to compensation, calculated in accordance with the increase in value of the ground for the remaining period during which the lease would have run but for the insolvency (*Langerman vs. Erans*, H. 295). In this case the law had terminated the lease on insolvency.

CHAPTER II.

Meetings of Creditors.

44. The Master of the High Court shall, in the notice mentioned by Art. 22, appoint two public meetings of the creditors of such estate at such times and places as he shall deem most convenient for all the parties concerned; the first for receiving proofs of debt against the said estate, and the second for the same purpose, and for the election of a trustee.

It shall be lawful for him, moreover, to alter the times and places so fixed for the holding of any of the meetings aforesaid, provided timely notice of such alteration be given in the *Staatscourant*. When the assets of the estate do not exceed the value of £75 sterling, he shall give notice of the same in the said advertisement and he shall therein also announce that unless it shall be shown at the first meeting called as aforesaid that the goods and effects of the insolvent exceed the value of £75, he shall proceed to act under the provisions of § 47.

NOTES.

If creditors fail to appear at the first or second meeting of creditors called under § 44, the Master may call a fresh meeting without the special authority of the Court (*In re Coetzee*, 12 J. 423).

The Court will order a meeting to be called at any town where it may appear most convenient. An estate was sequestrated by the High Court at Kimberley. The first and second meetings were held there. It clearly appeared to be for the benefit of all persons interested in the estate that the third meeting should be held in Cape Town. The Cape Supreme Court granted an order to that effect (*In re Firbank, Pauling & Co.*, 4 J. 337).

45. The Master of the High Court may, so soon as the election of the trustee had at the second meeting of creditors shall have been duly confirmed, appoint a third meeting, to be held at such time and place as shall appear to him most convenient for all persons concerned, for receiving the proof of debts against the said estate, as well as the report of the trustee as to the state and condition of the estate of the insolvent, and also to give to the said trustee directions as to the management thereof.

The trustee shall specify, in the same advertisement in which he shall give notice of the confirmation of his election as trustee, the time, place and purpose of every such meeting.

46. Any creditor may, after the second meeting of creditors, at his own expense, call another meeting of creditors expressly for the purpose of proving his debt.

47. Whenever it shall appear at the first meeting of creditors that the assets of the estate do not exceed the value of £75, a trustee shall be then and there elected, the debts shall be proved, ranked, and the estate distributed; and at the same time it shall be decided what part of their wearing apparel, bedding, household furniture, and tools of trade shall be allowed to the insolvent and his family.

48. If no creditors shall appear at any meeting appointed for the purpose of electing a trustee, then the Master of the High Court shall apply to the Court by petition to appoint a trustee for the due administration of the estate, or otherwise to set aside the order of sequestration.

NOTES.

If at a meeting of creditors no trustee is elected, and there appears to be no likelihood that a proper election will take place if the creditors are again summoned for the purpose, the Court will grant full power of administration and liquidation to the provisional trustee of the estate (*Ex parte Moller*, O.R. 1895, p. 115; *In re Lyons Brothers*, 2 J. 136).

49. Where any meeting of creditors for the proof of debts of the election of a trustee shall be appointed to be held at Pretoria, the Master of the High Court at Pretoria shall preside at the same: and if in any district of this Republic, other than the district of Pretoria, the Landdrost of such district, or the Special Landdrost of the public diggings, shall preside.

The presiding official may adjourn the meeting from time to time, if he shall deem it necessary.

50. Whenever the Master of the High Court, or the Landdrost, or any Special Landdrost, shall be prevented by illness or any unavoidable cause from holding any meeting of creditors, the High Court or any Circuit Court may appoint a Special Commissioner for such purpose, who shall have the same powers as are given to the said Master, or Landdrost, or Special Landdrost respectively in that behalf.

In default of such appointment, the Chief Clerk of the Landdrost or of the Special Landdrost, as the case may be, shall be charged with the duty of holding such meeting.

51. The Landdrost, Special Landdrost, Special Commissioner, or Chief Clerk, as the case may be, shall forthwith report to the Master of the High Court on everything done by them in their aforesaid capacity.

52. In all cases of votes given by creditors in pursuance of this Law, when the creditors are to be counted in number, no creditor whose debt is below £30 sterling shall be reckoned in number, but the debt due to such creditor shall be computed in value.

Every creditor may attend and vote at such meeting either personally, or by agent authorised by power of attorney to that effect duly executed.

All questions at any meeting of creditors shall be determined by a majority in value of creditors present and entitled to vote, unless otherwise expressly provided in law.

53. The insolvent, or the lawful administrator of any insolvent estate placed under sequestration, shall of his own accord attend before the creditors at the first, second, and third meetings of creditors to be held under and by virtue of the provisions of this Law, as also at any meeting which may have been adjourned and continued, unless he shall have obtained leave from the presiding officer not to attend such meetings.

He shall moreover attend any other meeting of creditors held in pursuance of the provisions of this Law, whenever he shall be required so to do by a written notice from the officer presiding.

54. The insolvent shall, at every meeting of creditors which he shall attend, answer all such lawful questions as shall be put to him by the officer before whom the meeting is held concerning his affairs and estate, and the cause and reasons of his insolvency.

He shall, at the second meeting, being thereunto required by the creditors, lodge with the aforesaid presiding officer a true inventory of his estate, containing a true statement of all his effects, movable or immovable, personal or real, wheresoever the same may be situated, and of all estates and effects in expectancy or contingency, or to which the insolvent may have any right, and of all debts due to and by him, to the best of his knowledge and belief, and of all books, accounts, vouchers, and other documents relating to his estate which he has in his possession.

The said insolvent shall moreover upon being thereunto required surrender the said books, accounts, vouchers, and other documents to the presiding officer.

The presiding officer shall hand over the inventory and the said books, accounts, vouchers, and other documents to the trustee so soon as the latter's appointment shall have been confirmed.

55. It shall be lawful for any presiding officer, and also for every creditor, or his attorney or agent, at any meeting to examine the insolvent upon oath concerning all matters relating to his trade, dealings, or estate, which may tend to disclose any secret alienation or concealment of his estate, or any part thereof. The presiding officer shall cause his examination to be reduced to writing, and signed by him, and annexed to the proceedings in the said estate.

If at such examination it shall appear that there are reasonable grounds for suspecting that the said insolvent has been guilty of culpable or fraudulent insolvency, it shall be the duty of such presiding officer to transmit the statements of the insolvent, with the other documents, to the State Attorney in order to enable him to take such steps as he may deem necessary for instituting criminal proceedings against such insolvent.

The insolvent shall not be entitled at such examination to refuse to answer any question put to him concerning his estate on the ground that he would incriminate himself by such answer.

CHAPTER III.

Proof and Ranking of Debts.

56. Every debt against the sequestrated estate which was due or the cause of which arose prior to the order for sequestration of any estate, may be proved at any meeting of the creditors, held at any time before the final distribution of the estate.

Provided always that when any debt is so proved at any meeting specified under Art. 46, no dividends which shall already have been paid shall in any way be disturbed or prejudiced: provided also, that when any such debt is proved after the plan of distribution of such estate has been confirmed, and in consequence of the proof of such debt any alteration in such plan of distribution or in any further proceedings in the sequestration shall be rendered necessary, the creditor proving such debt shall be liable for all expenses which may be incurred in consequence of any such alteration.

NOTES.

A creditor who has proved his claim on an insolvent estate may withdraw his proof of debt by giving notice thereof to the trustee, and need not obtain an order of Court for that purpose. Such creditor, however, remains liable to be placed on a contribution account for a *pro rata* share of all costs lawfully and *bonâ fide* incurred by the trustee previous to his receipt of the notice of withdrawal (*Cresscy vs. Haarhoff's Trustee*, 12 J. 123).

57. Every creditor shall prove his claim to the satisfaction of the officer presiding, who shall admit or reject any debt.

Such creditor shall prove his debts by affidavit, which shall be sworn before the Master of the High Court, Landdrost, or Justice of the Peace, or any Commissioner specially appointed by the High Court for administering oaths. Therein the creditor shall state the amount and nature of the said debt, what persons, if any, besides the insolvent, are liable for the said debt, the pledges or other securities given for the said debt; and shall depose, to the best of his knowledge and belief, that the debt is a true and lawful debt, and that all vouchers or evidence of debt which he shall produce with his affidavit are genuine.

NOTES.

It has been held in Cape Colony that a claim for unliquidated damages should be substantiated by action, and not proved as a debt against an insolvent estate (*De Klerk vs. Zeeman*, 13 J. 181).

In Cape Colony it has been held that, under § 130 of the Cape Ordinance, the creditors who have proved in a previous insolvent estate may again prove in the case of a subsequent sequestration where the insolvent has not been rehabilitated (*De Klerk vs. Winterbach*, 13 J. 179; *Lindenburg vs. Gibson*, 13 J. 24). See §§ 139, 143, and 144 of the Transvaal Law.

Spouses having a foreign domicile were married out of community of property. Rights were secured to the wife by ante-nuptial contract validly made at the domicile of marriage. The subsequent removal of the parties to Cape Colony was held not to deprive the wife of her rights, or prevent her from proving concurrently with other creditors on the insolvency of the husband in Cape Colony (*Bosman's Trustees vs. Bosman*, 14 J. 323; *Bernstein vs. Bernstein's Trustees*, 14 J. 161).

When the Master has not sufficient proof before him to admit a proof of debt, he ought expressly to reject it, and not to enter it short. A trustee has no right to admit a proof of debt not admitted by the Master, although he has the consent of a majority of creditors (*In re Anderson*, 3 M. 222).

58. It shall be lawful for the affidavit in the last preceding section mentioned to be sworn to by any clerk, agent, or other person, who is more fully cognisant of the nature of the debt than the creditor himself.

Any creditor who may be out of this Republic, in case he have no known agent or mandatory within the Republic, may make the necessary affidavits for the proof of his debt before any person duly qualified to administer oaths in the place where he resides. Such affidavits shall be duly legalised or certified in accordance with the customs and rules of the High Court.

59. It shall be lawful for every person interested to appeal to the High Court or any Circuit Court against the decision of the presiding officer as to the admission or rejection of any debt.

Such Court as aforesaid shall adjudge finally, whether such debt shall be admitted or rejected. Before adjudging finally, however, as to the admission or rejection of any debt, it may remit such case to the presiding officer for further proof, or may direct that the validity of the claim be tried by such course as to the Court shall seem fit.

It shall be lawful further for the Court to direct any action against the insolvent, which has in consequence of the sequestration been stayed, to be proceeded with after the election of a trustee. If the creditor thereafter shall obtain judgment thereon, he shall be ranked on the insolvent's estate for the amount of such judgment.

NOTES.

At an election of a trustee there were two candidates. After the election one of them, who was not a creditor, moved the Court to expunge a certain proof of debt and to have it declared that he was duly elected as sole trustee. He showed that an election had taken place, and that if the proof of debt had not been admitted he would have been duly elected as sole trustee. The Court held that under these circumstances he had a sufficient *locus standi* to make the application (*Elliott vs. Taylor*, 6 J. 2).

The Court has no jurisdiction until after the Master has rejected a claim sought to be proved (*In re Anderson*, 3 M. 222).

60. When there has been mutual credit given by the insolvent and any creditor, or where there are mutual debts between the insolvent and any creditor, the presiding officer shall make up and strike a balance on either side of such account, and shall rank the creditor for such balance as may be found to be in his favour: provided always that when such credit was given, or when the cause of his debt accrued, he shall have had no knowledge that any order of sequestration had been granted.

Any person interested, who shall consider himself aggrieved by any such decision of the presiding officer, may appeal against the same to the High Court, or any Circuit Court, which shall pronounce final judgment thereon, or direct such further proceedings as to the Court shall appear just.

NOTES.

A person died in August, 1884, indebted to an auctioneer to the amount of £199. The debtor's executors, through their agent, employed the auctioneer in September, 1884, to sell the movables in the estate. They were sold by the auctioneer, and realised £491. After the sale it was discovered that the deceased had been insolvent at his death, and his estate was surrendered. The auctioneer, who had not made any claim upon the estate, now sought to set off £199 of the proceeds in his hands against the debt due to him, and to pay the balance to the trustees

of the debtor's estate. It was decided that he was bound to hand over the whole amount of the proceeds and to prove on the estate as a concurrent creditor. The Court held that this was no such "mutual debt" as the Insolvency Law contemplates, there being no mutuality between the parties (*Brink's Trustee vs. Theron*, 4 J. 25).

Section 60 of the Law sustains the right of every creditor to plead compensation after the surrender of the insolvent's estate, in respect of any debt due by the insolvent to him, and against any debt due by him to the insolvent, in respect of and against which he might have pleaded compensation in a question with the insolvent, if he had been solvent, provided the creditor, "when such credit was given, or when the cause of his debt accrued, had no knowledge that any order of sequestration had been granted" (*Manuel's Trustee vs. Norden*, 3 M. 288).

A employed B as his attorney in an action in which he obtained judgment with costs, and was also indebted to B for previous legal expenses. Before the amount of the judgment could be recovered A became insolvent, and B then obtained the amount on instructions received from A's trustee. It was held that B was not entitled to set off against the amount so obtained by him his previous claims against the insolvent, but must prove for them in the ordinary manner (*Murtha's Trustee vs. Coghlan*, 1 G.W.R. 511).

The non-proof by a creditor of his claim on the estate of an insolvent debtor does not deprive such creditor of the right to set off his claim against a debt due by him to the insolvent (*Gammer's Trustee vs. Joseph*, B. 1876, p. 229).

61. It shall be lawful for a creditor whose debt was not due and payable by the insolvent at the date of the granting of the order for the sequestration of his estate, to prove such debt; but he shall in such case only receive payment thereof or dividend thereon after deduction therefrom of a rebate of interest at the rate of six per cent. per annum, to be computed from the date of the order of sequestration to the time when such debt would have been payable. Such debt shall also be valued for voting at this reduced amount.

62. Any creditor who shall hold a conventional or tacit right of preference upon any part of the insolvent estate shall, when he is the petitioning creditor, be obliged upon oath in the affidavit accompanying the petition, and when he is not the petitioning creditor in the affidavit produced by him at the time of proving his debt, to make mention of such preference. In case he has any security for his aforesaid preferent claim, he shall put a value upon such security, and deduct the amount of such value from the debt so proved by him, without prejudice, however, to any such valuation being afterwards corrected, and without any prejudice to

the amount of his claim in other respects. He shall be entitled to vote to the full amount of his debt in the election of a trustee, and in all matters relating to the property over which he holds such security; in all other cases, however, for the balance only. He shall only be ranked for and receive payment or dividend for the balance.

If any dispute shall arise about the value of such security, the creditor shall upon oath put a value upon it.

The trustee shall then have an option either of taking over the security for the benefit of the creditors at large on payment of the amount of the valuation out of the assets of the estate, or of leaving the full realisation of it to the creditor himself.

NOTES.

In seeking to sequester the estate of a debtor as insolvent, the petitioning creditor must mention and value all securities he holds for the debt (*Standard Bank vs. Van Buuren*, 11 J. 316; *Standard Bank vs. Kruger & Co.*, 4 F.D.C. 47).

In the Transvaal it is only in matters relating to (1) the election of a trustee and (2) the property over which he holds his security that a preferent creditor may vote to the full extent of his claim: in other matters he votes to the extent of the difference between his claim and the value of his security. In Cape Colony it has been held that a creditor who holds a general bond over movables may vote to the full extent of his claim with regard to the disposal of such movables (*Burger vs. De Villiers*, 15 J. 180).

A provisional order of sequestration was granted upon an affidavit which alleged a debt due, upon which judgment had been obtained, and a return of *nulla bona*. Upon the motion for the final order it appeared that the petitioning creditor held certain bonds as security for the debt, which security had not been valued in the affidavit. The evidence was conflicting as to whether the bonds were of sufficient value to cover the debt. The Court discharged the provisional order, saying that if the security had been mentioned and valued in the first instance the matter would have been enquired into, and a commissioner might have been appointed to value the property held as security (*Standard Bank vs. Winterbach*, 4 J. 329).

The Witwatersrand High Court (*In re Anderson*, 1904, not yet reported) has held that, where it is impossible to place a value on the security, no value need be given in the affidavit on the application for sequestration.

63. No creditor whose debt depends upon a contingency or upon a condition shall be entitled to petition or join in the petition for sequestration of any estate, or to vote in the choice of trustee, or on any other matters relating to the estate, so long as the contingency shall not have happened, or the condition shall not have been fulfilled.

The trustee shall, however, at the creditor's request set a value upon such debt, and admit such creditor to prove the amount so ascertained. Such creditor shall then be entitled to vote, and to receive payment or dividend for the amount of such valuation. If the contingency or condition upon which such debt depends shall have happened or shall have been fulfilled, then such creditor shall be ranked for the whole amount of his debt, and shall receive payment or dividend thereon.

NOTES.

The holder of a promissory note, payable three months after the death of insolvent's father, is not such a contingent creditor as to be prohibited from voting for the election of a trustee. "The death of the insolvent's father was an event which must happen. It was only the time when it would happen that was uncertain" (*In re Du Toit*, 16 J. 416).

Creditors holding bonds in which the surety and co-principal debtor has renounced the benefits of excussion and division (in consequence whereof he may be sued directly, without notice to or demand on the principal debtor) are not contingent creditors where the principal debtor has not surrendered or been excused, but are entitled to prove immediately on the surety's insolvent estate, and to vote in the election of trustee (*In re Deneys*, 3 M. 309).

See *Leigh's Trustee vs. Leigh* (1 J. 75) in the notes under § 39, above.

64. Whenever a value has not been placed upon any conditional debt as above specified, the trustees shall rank the same as if the contingency had happened, or the condition been fulfilled. The Court in such case shall grant an order, upon the petition of the trustee, securing to him the amount or the dividend to which such creditor shall be entitled so soon as the contingency shall have happened or the condition has been fulfilled. Any interest, however, which may in the meantime be received thereupon shall accrue to the benefit of the other creditors. For the purpose of voting on any offer of composition, a debt ranked in manner as above set forth shall be valued at an amount to be fixed by the Master, subject to an appeal to the High Court.

65. When the Court shall be of opinion that by reason of the absence of any person from this Republic, or for any other cause appearing to the High Court, a creditor who has not proved a debt to the satisfaction of the Court may eventually be able to establish the same, it shall be lawful for the Court to cause such debt to be provisionally ranked in the proceedings of the insolvent estate, and to give such creditor reasonable time for proving the same, and in the meantime to make such order for securing the amount thereof, in case the said claim shall be afterwards proved.

66. Each debt upon which the payment of interest has been stipulated shall be entered and ranked for the amount due thereon, together with the arrears of interest.

NOTES.

In the Cape Colony interest on a mortgage bond accruing after sequestration has been allowed at the rate stipulated for in the bond (*In re Standen*, B. 1873, p. 92). This decision proceeded on the construction of § 33 of the Cape Ordinance. Whether the same construction will be placed on § 66 of the Transvaal Law is uncertain.

67. In every case in which it shall happen that the estate of any partnership, and the estate or estates of one or more of the partners of such partnership shall be concurrently placed under sequestration, the ranking of the debts of the different creditors shall take place in accordance with the following rules:—

- (a) The debts of the creditors of the said partnership shall be ranked upon the estate of the partnership, and the debts of the creditors of each partner separately in the separate estate of such partner.
- (b) If there are no assets in the estate of the partnership, or insufficient to satisfy the creditors of the partnership, then the debts of such creditors shall be ranked upon the surplus of each estate of the individual partners which may remain after satisfying the separate creditors of that estate, either for the residue or the whole of his debt, as the case may be; provided, however, that no creditor shall receive in all more than the whole amount of his debt.
- (c) If there are no assets in the separate estate, or insufficient to satisfy the creditors of that estate, then the debts of such creditors shall be ranked upon any surplus of the partnership estate which shall remain after satisfying the creditors of that estate in proportion to the share of such surplus to which the particular partner would be entitled.
- (d) If in the case specified under (b) the creditors of the partnership shall receive satisfaction wholly or in part out of the surplus of the separate estate of any of the partners, the trustee of the latter's estate shall be entitled to rank as creditor upon each separate estate of each of the partners for the whole amount he has paid out in satisfaction of the debts of the partnership; provided, however, that such shall not operate to the prejudice of preferent claims.

Provided always that such can be done without any detriment to the rights of creditors of the partnership against each individual partner whose estate shall not have been placed under sequestration, and *vice versa*.

NOTES.

A partner has no authority to pledge securities belonging to the partnership for his private debt, and the pledgee will not be entitled to claim in respect of such securities on the sequestrated estate of the partnership (*Zeederberg vs. Norton's Trustees*, 3 S. 12).

A partnership known as C & Co., of which A and B were the members, was dissolved. A took over the assets of the firm, and, in consideration of his receiving the assets, agreed to indemnify B, who retired from business, against all claims which might be made against B in respect of the late partnership of C & Co. Thereafter A's estate was both surrendered and sequestrated. B was held entitled to prove on A's estate in respect of any sums which he might be called upon to pay for debts owing by C & Co. (*Copestake vs. Alexander*, 2 J. 137).

The same persons were partners in two firms which carried on business in the same town in two distinct capacities. The profits earned by the one firm were paid into the account of the other firm, which became insolvent. The holders of promissory notes drawn in the name of the former firm were held entitled to prove for them on the insolvent estate of the latter firm, which would in the ordinary course have derived the profits from the notes (*Bate vs. Hunt*, 2 J. 179).

68. The creditors of any partnership, whether the estate of such partnership has been sequestrated or not, may prove their debts in the sequestrated separate estate of any one of the partners for the purpose of voting at the election of trustees, or on any offer of composition.

They shall not, however, be entitled to receive any dividend out of such separate estate before the creditors of such estate have been fully paid, unless the order for the sequestration of such estate has been granted upon their petition.

69. In every case not expressly provided for in this Law relating to the ranking as between each other of the creditors of any partnership, or of those of the separate estate of any partner, the general principles of law shall apply and be resorted to.

70. The assets of the estate shall, after payment of all costs lawfully incurred as hereinafter provided, be applied: In the first place to the payment of the preferent debts, together with such interest due thereon as shall according to law be preferent: thereafter to the payment of the capital sums of all concurrent debts,

without interest, where the assets of the estate are insufficient to satisfy all the claims against the estate, but with interest from the date of the granting of the order of sequestration, in case there should be a surplus left after satisfying all claims against the estate.

CHAPTER IV.

Provisional and Elected Trustees.

71. It shall be lawful for the High Court or any Circuit Court upon petition made in writing, setting forth the grounds upon which such petition is based, by the Master of the High Court, or any person interested, to appoint one or more fit persons as provisional trustee of any insolvent estate, whether provisionally or finally sequestrated.

Thereupon such estate shall pass out of the hands of the Master of the High Court and vest in the provisional trustee so appointed, and shall so remain vested in him until such time as an election of a trustee shall have been definitely made by the creditors and been duly confirmed, and otherwise until the account and final plan of distribution of the estate shall have been confirmed.

In the event of the death or the removal of a provisional trustee before that time, the estate shall revert to the Master of the High Court.

NOTES.

The fullest information should be given to the Court at the time when an application is made for the appointment of provisional trustees (*In re Lewin*, 11 J. 103).

After the granting of a provisional sequestration, and before the return day of the order, the Court granted an application for the appointment of a provisional trustee, on the ground that certain partially reaped corn required immediate attention, giving the trustee power merely to gather in the crops, and reserving leave to the insolvent to have the appointment set aside (*In re Mostert*, 5 S. 309).

A petition for the appointment of a provisional trustee should give some idea of the value of the estate, and the proportion of the petitioner's claim (*In re Dacey*, 2 C.L.J. 155).

See note to § 48, above.

A provisional trustee was appointed where the assets in the estate consisted mainly of ostriches and other live stock (*Rubidge vs. Foxcroft*, 9 E.D.C. 134).

72. The provisional trustee shall have the same powers and authorities in respect to the administration and management of the estate, and shall be subject to the same obligations as the trustee elected by the creditors.

He shall, however, have no power to sell any part of the said estate without the authority of the High Court or of a Circuit Court.

NOTES.

A provisional trustee is entitled, on handing over the assets of the insolvent estate administered by him to the final trustee, to retain a sufficient sum of money as a reasonable remuneration for his services (*MacColl vs. Rainier*, H. 280).

73. At the second meeting of creditors a trustee or trustees, not exceeding two in number, shall be chosen for the administration and management of the estate by the majority of the creditors present, whose collective debts proved shall amount to more than one-half of the whole value of all the debts represented and proved on the estate.

Whenever it shall appear that in the voting the above result has not been attained in manner as hereinabove set forth, then both the person who shall have obtained the votes of the greatest number of creditors, and the person who shall have obtained the vote of the creditors holding the largest amount in value of the debts represented at the meeting, shall be chosen as trustees.

NOTES.

In an election, only one candidate was nominated. His election was opposed by one creditor, who had the majority in value. The majority in number of the creditors voted for the candidate. He was declared elected, subject to confirmation. The Court held that the law contemplated the nomination of a second candidate if the first candidate proposed was objected to; that the proper course for the opposing creditor was to have nominated another candidate; and that, as there was only one candidate, and a majority both in number and in value had voted for him (and not for another candidate), his election must be confirmed (*Gowie & Co. vs. Smith*, B. 1868, p. 103).

74. It shall be lawful for every person interested in such estate who shall be aggrieved by such election, upon giving notice in writing of the particulars of such complaint to the officer presiding at the meeting before the election is confirmed, but in any case within two days after the said election, to bring the same under review in the High Court, which shall decide summarily thereon.

It shall also be lawful for any person interested to apply to the Court even after the election has been confirmed to recall the confirmation, and set aside the election on the ground that such election was fraudulently or unlawfully made.

NOTES.

It is only in cases where fraud is alleged that the election of a trustee may be brought in review before the Court after expiry of the period of two days fixed in the section (*Hugo and others vs. Moller*, O.R. 1895, p. 164). Of course, even after the confirmation, the election itself may be set aside for fraud or illegality.

The chief creditor of an insolvent estate resided at a distance from the town where the election of trustee was to take place. He mistook the post for this town, and in consequence failed to send a power to prove his debt and vote for himself as sole trustee. In consequence another person was elected sole trustee. On the application of the chief creditor, the Court relieved him from the consequences of his mistake and ordered a fresh election (*Deare & Dietz vs. Honeyborne*, B. 1868, p. 107).

75. Persons disqualified from being elected trustees :—

- (a) The insolvent himself.
- (b) Any person related to the insolvent by consanguinity or affinity within the fourth degree.
- (c) A minor.
- (d) A law agent or attorney.
- (e) Any person whose estate has at any time been placed under sequestration, and who has not been rehabilitated.
- (f) Any one non-resident within the jurisdiction of the High Court.
- (g) Any person having an interest opposed to the general interest of the creditors in the insolvent estate.
- (h) A former trustee disqualified by virtue of the provisions of Article 90.
- (i) Any person declared to be incapable of being elected by virtue of the provisions contained in the next succeeding article.

NOTES.

(g) Certain creditors of an insolvent estate sought to set aside the election of the trustee on the ground that he had received an undue preference from the insolvent. The alleged circumstances which constituted the undue preference were specially denied by the trustee. The creditors did not allege that they intended to bring an action against the trustee to have the alleged undue preference set aside. The Court refused to set aside the election of the trustee (*Turner & Co. vs. Schaefer*, 2 J. 101; see also *In re Wells*, 4 S. 84).

76. It shall be lawful for the High Court or a Circuit Court, on the request of any person interested, either before or after the decree confirming the appointment of any trustee, to declare any person elected as trustee to have forfeited his office: and further, if it should so think fit, to declare such person incapable of being elected trustee under the provisions of this Law during his natural life, or such period as such Court shall determine, for the offences hereinunder specified:—

- (a) Whenever in order to exercise influence upon his election as trustee he has been guilty of procuring, or been privy to, the omission of the name of any creditor of the insolvent from the schedule of the insolvent as required under § 23 of this Law.
- (b) Or either directly or indirectly gives, or promises to give, to any creditor of the insolvent any valuable consideration in order to obtain his vote.
- (c) Or to have agreed to secure and make good to any creditor some certain sum or dividend in discharge or diminution of his debt, upon condition and in order to obtain his vote.
- (d) Or to have offered or agreed with any creditor to abstain from opening up or investigating some previous transactions between such creditor and the insolvent which were, or were supposed to be, of questionable validity, upon condition and in order to obtain his vote.
- (e) Or if he has been guilty of or privy to any plan or arrangement by which debts belonging to some one or more persons have been divided among a greater number of persons for the purpose merely of increasing the number of votes, and thereby influencing his election as trustee.
- (f) Or if he has undertaken to accept from any agent, auctioneer or other person by him employed for and on behalf of the estate, any share of his commission or remuneration, or any other benefit whatsoever.

In all the aforesaid cases, the Court declaring the same shall order a new trustee to be elected.

77. It shall be lawful for the High Court, or any Circuit Court, upon petition by the Master, or by any person interested setting forth the grounds of the same, to remove any trustee :—

(a) For insolvency.

(b) For any misconduct in the said trust, under which shall be deemed to be included any neglect or refusal to satisfy any lawful claim, made upon him by the Master of the High Court, or by any commissioner appointed by the Court.

(c) On account of absence from this Republic.

NOTE.

The Witwatersrand High Court has no jurisdiction to remove the trustee of an insolvent estate, where the insolvent is not resident within the jurisdiction of the High Court. But an order for such removal will be granted by the Judge of the High Court, sitting as a Judge of the Supreme Court in chambers (*Ex parte Fass & Co.* [1902], T.H. 95).

78. The Court shall in the case aforesaid, and as often as any trustee shall die, or shall become incapacitated, or shall obtain leave from the Court to resign, order a new trustee to be elected, and at the same time may make such order as the Court may deem necessary or expedient for the preservation of the insolvent estate until such new trustee shall be elected and confirmed.

During the period of time which shall elapse between the death or removal of any trustee and the confirmation of the election of a new trustee, the insolvent estate shall vest in the Master of the High Court, unless there shall still be left in office a trustee of the said estate.

79. The newly-appointed trustee shall be entitled to the same rights and be subject to the same obligations in respect to the estate as his predecessor in office.

He shall be entitled to demand from the latter an account of his administration of any part of the estate administered by him in his capacity as trustee.

All things lawfully done by him in his capacity as such trustee shall remain in full force and effect.

80. Every election of a trustee shall be confirmed by the Master of the High Court, who shall deliver a letter of appointment to the trustee so elected, authorising him to administer and distribute the estate.

Whenever any objection to the election of a trustee has been taken, in accordance with the provisions of § 74 of this Act, before the High Court, then the final confirmation of the election shall be made by the said Court.

81. Every trustee shall forthwith, after the confirmation of his election as trustee, give notice thereof by advertisement in the *Staatscourant*. The Master of the High Court shall in like manner give notice of every order for the removal of a trustee.

82. Whenever any trustee desires to resign his office, or whenever the plan of distribution of the insolvent estate has been confirmed, it shall be lawful for such trustee to apply to the High Court for leave to resign his office and to be discharged of his said trust. If no valid objection be stated, and if the Court be satisfied that the trustee has complied with the regulations of this Law, his application shall be granted by the Court, and the Court shall thereupon make such order as they shall see fit for the preservation and administration of the estate until a new trustee be chosen. If any objection be made to the application of the trustee to resign, the Court shall determine the same in a summary manner.

NOTES.

Notice must be given by the trustee of an insolvent estate of his intention to apply to the Court, under this section, for leave to resign his office, so as to enable any person interested to appear and oppose if so advised (*In re Wolstenholme*, 9 J. 49).

83. Any trustee, before making any application for leave to resign, shall render a full account of his administration of the insolvent estate, together with a full report of the condition thereof, and shall call a meeting of the creditors to consider the same, of which meeting at least twenty-eight days' notice shall be given by advertisement in the *Staatscourant*.

84. So soon as the appointment of a trustee shall have been confirmed, the Master of the High Court, or any provisional trustee, if any such person shall have been appointed, shall be divested of the estate, and it shall vest in the elected trustee, and remain vested in him as long as the sequestration shall continue, and until the confirmation of the account and of the final plan of distribution.

The trustee shall be entitled to use the same remedies to recover the estate of the insolvent, or any part thereof, in his own name, as the insolvent himself might have had if his estate had not been sequestrated: and generally have all powers which were vested in the insolvent before the sequestration.

NOTES.

An insolvent, who believes his estate has a remedy against a third person to recover a debt due, cannot compel his trustee to bring an action, where the trustee alleges that the estate has been wound up and there are no assets, and the applicant (the insolvent) does not tender the costs of such action (*Du Plessis vs. Du Plessis' Trustee*, 5 J. 220; *Pratt vs. Pitman*, 4 J. 190).

An insolvent will be ordered, on motion, to give up possession to the trustee of landed property in the insolvent's possession belonging to his estate. The insolvent cannot justify remaining in possession of landed property belonging to his estate, on the ground that the will by which the property was bequeathed to him gave the right of pre-emption to his brothers and sisters (*Olivier's Trustee vs. Olivier*, 9 J. 208).

A power of attorney to sue, signed by one of two trustees "for self and co-trustee," is not sufficient to support a summons (*Dodds & Co.'s Trustees vs. Watson*, 1 M. 140).

85. At any meeting of creditors of any insolvent estate, by resolution passed by the votes of the greater part in value of the creditors, the trustee may be required to give full and sufficient security at his own cost, to be approved of by the Master of the High Court, and to be placed in his hands, for the due administration and liquidation of the estate.

Such security shall be provided within fourteen days after the passing of such resolution, and in default thereof his election, if not confirmed, shall be void, and if confirmed, he shall be removed from his trust; without prejudice, however, to the right of such trustee, or of any person interested in the due administration of the estate, to bring the amount of such security in review before the High Court.

86. As soon as the final account of liquidation and distribution shall have been confirmed, and receipts for all dividends awarded to creditors, as well as the amounts of unclaimed dividend lodged with the Master of the High Court, every security given by a trustee shall lapse and be cancelled by the said Master. Provided, however, that the cancellation of such security shall not be taken in any way to affect the liability of the said trustee incurred in respect to his management of the same.

87. It shall be the duty of the creditors of any insolvent estate, at the meeting held for the election of trustees, immediately after such election, by resolution of the majority of creditors, calculated upon the basis of the greater part in value of the said creditors, to nominate and appoint some certain bank or banks within this Republic, with which bank or banks it shall be the duty of the

trustee to open an account in the name of the estate. Every provisional trustee appointed under the provisions of this Law, and every trustee whose election has been duly confirmed, shall open an account with one or more banks within this Republic, as he or they shall select, in case the creditors of any insolvent estate shall not have nominated any such bank or banks as aforesaid.

NOTES.

The transfer by a bank of the funds of an insolvent estate from the account of the estate to the private account of one of the two trustees, upon cheques signed by one trustee only, without the consent of his co-trustee, the bank knowing at the time of such transfer that the money had been deposited by such trustee on behalf of the estate, is no valid payment by the bank, to the trustees of the insolvent estate, of the funds of the estate which had been deposited in the bank (*Marais' Trustees vs. Queenstown Bank Liquidators*, B. 1876, p. 219).

This section is only directory as regards allowing the trustee to choose a bank, but is imperative as regards his choosing some bank and paying the moneys into it (*In re Dallamore & Co.*, 9 C.L.J. 266).

88. All trustees, whether provisional or elected, shall, as soon as they have more than £20 in hand belonging to the estate, pay the same into some such bank or banks as aforesaid. All cheques or orders for the payment of any such moneys out of the bank shall truly express the cause of such payment, and the name of the person in whose favour it is drawn, and shall be signed by all the trustees, or by one of them on behalf of all. All trustees, whether provisional or elected, shall, in regard to all transactions with any such bank or banks, follow such directions as they shall receive from the creditors at any general meeting.

NOTES.

All cheques for the payment by a bank of money belonging to an insolvent estate are required truly to express the cause of such payment, and the name of the person in whose favour the cheque is drawn, and to be signed by all the trustees, or by one of them for himself and co-trustees: and the bank may refuse to pay cheques unless signed by all the trustees, or require the production of a power from the co-trustee before paying cheques signed by only one trustee (*Marais' Trustees vs. Queenstown Bank Liquidators*, B. 1876, p. 219).

A trustee in an insolvent estate received certain moneys due to the estate, and retained them in his own hands, instead of paying them into the bank account of the insolvent estate. He called a special meeting of creditors with reference to this money, and was instructed by the creditors to hold the money until the question of the preference of a claim filed against the estate by a certain creditor was decided. After that decision another creditor applied, upon motion, to make the trustee liable for the penalty (the same as that stated in § 89 of the Transvaal Law). Under the circumstances the penalty was not imposed, but no order was made as to costs, as the trustee had not strictly complied with his duty to pay the money into a bank (*Basson vs. Hodges*, 5 S. 278).

89. Every trustee who, without any just and lawful cause, shall retain any sum of money exceeding £20 sterling, being part of the estate, or shall knowingly permit any co-trustee so to do, longer than until the first day after his receiving the same upon which it shall be possible for him or his co-trustee to pay the said sum or cause it to be paid into some bank, or who shall employ any sum of money belonging to the estate for his own benefit, or knowingly permit any co-trustee so to do, shall have to pay into the estate double the amount of the sum so retained or employed.

The said sum may be deducted out of any claim the said trustee may have against the said estate, or otherwise recovered by action in any competent Court.

NOTES.

See notes to § 88, above.

90. Any trustee who shall himself become insolvent whilst being indebted to the insolvent estate for any sum of money by him improperly retained and employed in manner as aforesaid, shall not be discharged from such debt by his rehabilitation, but shall remain liable for the amount in respect to any future property of which he may become possessed.

He shall moreover in such case be for ever incapable of being again elected as trustee.

91. The trustee shall keep a book, wherein he shall enter all moneys, goods, books, accounts and other documents received by him from the insolvent, or on account of the insolvent's estate, and all payments made by him on account of the insolvent's estate.

This book may be inspected at all reasonable times by every creditor who shall have proved his debt.

The Master of the High Court, whenever he shall think necessary, may order the said trustee by writing to produce the said book for inspection, examination, verification or otherwise.

92. It shall be lawful for the trustee at any time to call a general meeting of creditors, and require their directions concerning the recovery or sale of any part of the estate, or concerning any matter or question relating to the administration of the said estate.

It shall be the duty of such trustee to call such meeting whenever he is thereto required by one-fourth of the creditors in value who have produced and proven their claims.

At least twenty-eight days' notice shall be given of every such meeting and of the purpose thereof in the *Staatscourant*, unless the presiding officer shall have allowed the trustee to call a meeting upon some shorter notice.

93. The trustee shall follow the directions of the majority of the creditors attending such meeting; such majority shall not, however, be competent to direct the said trustee to do anything calculated to interfere with or injure the just rights of any creditor who shall hold any conventional or tacit preference upon any part of the insolvent estate. In case any such direction shall nevertheless be given, any such creditor may apply to the High Court by motion to set aside such directions, which Court shall judge thereon as it shall deem just.

94. It shall be lawful for a trustee to take legal advice on any legal question affecting the insolvent estate or the administration thereof, and employ an attorney for the conduct of suits at law for or against the estate. All such costs as shall thereby be incurred shall be charged against the estate. They shall be taxed by the Master of the High Court, subject to the review of such Court upon the complaint of the attorney or of any other person interested.

95. If it shall appear to the High Court that any advising attorney has improperly advised the institution of an action or suit at law, with the purpose of thereby benefiting himself, and not the estate, or that he has improperly conducted such action, or has incurred any unnecessary or improper expense in such action, then it shall be lawful for the said Court to order the whole or any part of the costs to be borne by such attorney as the said Court shall think fit.

96. The trustee shall, subject to the direction of the creditors, as soon as may be, proceed to sell all the property belonging to the estate, after having given due notice thereof in the *Staatscourant*, and also such other notice as the creditors may deem necessary.

From the sale of the said movable property shall be excepted, until the creditors shall determine thereon, the wearing apparel, bedding, household furniture, and tools of the insolvent and his family. The sale of the immovable property shall take place in such manner and under such conditions as shall be determined on

by the majority of the creditors present at the meeting. The said conditions may, however, be submitted to the approval of the High Court or any Circuit Court on the application of any party interested.

The trustee, however, shall not be entitled to act as the auctioneer at the sale of the goods of any insolvent estate as hereinabove set forth.

NOTES.

A trustee in insolvency is not entitled to sell household furniture alleged by him to belong to the insolvent estate without directions to that effect given by the creditors, in terms of § 96 of this Law, at a duly convened meeting held after the second meeting of creditors (*Bernstein vs. Bernstein's Trustee*, 14 J. 161).

No one who is not a creditor having duly proved his debt has *locus standi* to set aside a sale in the insolvency (*In re Anderson*, 3 M. 222).

97. It shall be lawful for the Master of the High Court or any trustee, whether provisional or elected, to allow to the insolvent out of the assets of the insolvent estate, provisionally, such moderate sum or sums as to them shall seem indispensably necessary for the support of the insolvent and his family. The said Master or trustee, provisional or elected, may also employ the insolvent, or any other person, in the gathering and preservation of any crops or harvest or produce of any kind for any reasonable time necessary thereto: and also place the insolvent, or any other person, in charge of any immovable property, manufactory, or concern belonging to the insolvent estate, until the same shall be sold, disposed of, or wound up, and make to the said insolvent or other person so employed a reasonable allowance for his labour.

98. The amount of every such allowance granted either for support or labour before the meeting of creditors which shall be first held after the second meeting of creditors directed by this Law, shall be submitted to the approval of creditors, who shall have power to decide whether any such allowance shall be maintained, and if so, for what length of time, and what shall be the amount thereof.

Every trustee who shall make any such allowance to an insolvent, except with the consent of the creditors as aforesaid, shall forthwith report to the Master of the High Court the amount of and grounds for making such allowance. Every such allowance so made shall be subject to the review of the High Court upon the application of the said Master, or of any person interested.

99. The trustee may, with the consent of the majority of the creditors present at any meeting whereof twenty-eight days' notice shall have been given in the *Staatscourant*, and subject to the subsequent approval of the High Court, or of any Circuit Court, if any person interested so desires, permit the insolvent to retain for his own use the whole or part of his wearing apparel, bedding, household furniture, and tools of trade.

NOTES.

A resolution permitting the insolvent to retain the use of his household furniture must be passed at a meeting specially convened for that particular purpose; and the Court will not sanction such a resolution if passed at "a special meeting for the purpose of considering the trustees' reports presented at the third meeting, and for giving instructions to the trustees as to the management of the estate and for general business" (*In re Chiappini*, 2 S. 218).

100. The trustee shall collect all moneys due to the estate, and for that purpose he shall, by advertisement in the *Staatscourant*, summon all debtors to pay at such time and place as shall be therein appointed for the purpose. Every person after such notice as aforesaid neglecting or refusing to make such payment, and being afterwards sued for any such debt, shall, if the said trustee obtain a judgment against him, unless he shall show reasons satisfactory to the Court awarding such judgment, for such neglect or refusal be condemned to pay to the said trustee double costs of suit for the benefit of the said estate. The advertisement in the *Staatscourant* shall be held to be sufficient notice for all persons who reasonably could be expected to have seen the same.

101. The trustee shall be entitled, if necessary by process of law, to set aside all unlawful payments, alienations, or pledges or mortgages made by the insolvent.

Whenever the insolvent shall have entered into any agreement for the purchase or exchange of any estate, or any interest in any immovable property, the trustee may elect either to abide by or to abandon the same.

If the said trustee neglect to make such election, the vendor or person with whom the contract has been made shall be entitled to apply by motion to the High Court, which may thereupon order the trustee to give up any such contract and deliver the possession of the property which was the subject of the same to the vendor or other person, or make such other order therein as the Court shall think fit.

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The vendor or person with whom the contract has been made shall, in any case, be entitled to sue the trustee in any competent Court for any damage and costs which he has sustained by reason of the non-observance of any such agreement.

NOTES.

The abandonment of an agreement of sale has no other effect than (1) to discharge the trustee from all liability to fulfil any of the stipulations or conditions of the agreement which remain still unperformed or unfulfilled; and (2) to entitle the seller to obtain or retain possession of the subject sold, and to sue the insolvent estate for any damage which he can prove to have been sustained by him by the non-fulfilment of the agreement on the part of the insolvent. It does not entitle the creditors to have the sale annulled and rescinded *ab initio*, nor to have matters restored to the same situation in which they were before the agreement was made, or before any of the stipulations or conditions had been performed or fulfilled, nor to reclaim from the seller any part of the price of which previous to the abandonment he had obtained payment (*Neethling's Trustee vs. Neethling*, 3 M. 283).

102. It shall be lawful for the trustee, subject to the approval of the creditors, to agree to any offer of composition made to the insolvent estate by any debtor who is himself insolvent, and to compound with any debtor to the insolvent estate and take any reasonable part of the debt in discharge of the whole, or to give a reasonable time or take a reasonable security for the payment of such debt.

He may also submit any disputes between him and any person concerning the said estate to the determination of arbitrators, to be chosen by the said trustee and the party with whom he shall have such dispute, and the award of arbitrators so elected shall be binding on all the creditors.

The trustee shall give previous notice of all such proceedings as hereinabove set forth, for twenty-eight days at least, by advertisement in the *Staatscourant*.

If there should be more than one trustee in such insolvent estate, in voting on such offer of composition the trustees signing shall be reckoned only as one creditor in number, and the value of the debt on the estate shall only be reckoned once.

103. It shall be competent for the trustee to take up and continue an action commenced for any debt due to the estate, or to discontinue the same, as he shall see fit; and also to commence any new suit or action in any competent Court for any debt due to the estate; and also to defend any action brought against him, or pending against the insolvent, relating to the said estate.

NOTES.

It is necessary, to entitle a trustee to continue in his own name process commenced in the name of a person who has surrendered his estate, that such trustee shall thereafter apply, by suggestion, to the Court for substitution of his name on the record. No notice, to the defendant, of such application is necessary (*Chase vs. Niekerk*, 3 M. 299).

104. Whenever a trustee shall die, or the removal of a trustee shall take place, no action relative to the insolvent estate shall thereby lapse.

The Court in which any such action is pending may, upon receiving notice of such death or removal, allow the name of the surviving or new trustee to be substituted in the place of the former, and the action shall proceed as if such surviving or new trustee had originally commenced or defended the same.

105. Every trustee, whether provisional or elected, shall be entitled to a reasonable remuneration for his services, to be fixed by the Master of the High Court.

The said Court may, upon the petition of a trustee or of any creditor, or of any person having an interest in the estate, review the decision given by the Master thereupon.

NOTES.

If a trustee has consented to the valuation and retention of his securities by a secured creditor, the trustee is not entitled to charge commission on the value of such securities. Where the Master had allowed the trustee certain special remuneration, in addition to his commission, on account of his loss of time and trouble in conducting a lawsuit and other matters connected with the administration, the Court, in the absence of satisfactory evidence of exceptional circumstances to justify such special remuneration, disallowed the charge (*Standard Bank vs. Biden's Trustee*, 2 G.W.R. 222).

CHAPTER V.

Composition.

106. At the third meeting of creditors, or at any subsequent meeting of creditors duly advertised in the *Staatscourant*, stating the purpose of such meeting, it shall be lawful for the insolvent to make an offer of composition, or of security for composition.

If three-fourths of the creditors present, whose joint claims amount to three-fourths of the total amount of the claims represented at such meeting, agree to such offer, the trustee shall immediately convene another meeting for the purpose of definitely deciding thereon.

At least forty-two days' notice shall be given beforehand by advertisement in the *Staatscourant*, specifying the time, place and purpose of such meeting.

107. Whenever at such meeting three-fourths of the creditors present, whose debts together amount to three-fourths of the whole amount of the debts represented at such meeting, shall accept such offer, the Master of the High Court shall give notice to the High Court of the acceptances of such offer.

108. Whenever the number of the creditors present at such meeting as aforesaid, agreeing to the offer of composition, or of security for composition, do not amount to two-thirds of the whole number of creditors, and their debts taken together do not amount to two-thirds of the whole amount of the debts proved against the insolvent estate, the Master of the High Court shall state such fact to the High Court.

109. The right of any creditor entitled in law to be paid in preference shall in no way be prejudiced, unless such creditor shall have expressly consented to give up his preference.

110. Every preference, gift, security or payment granted, made, promised or offered by the insolvent to or on behalf of any creditor, and all secret agreements or collusive arrangements entered into with any creditor to obtain his concurrence to the said offer of composition, or security for composition, shall be null and void. Any creditor who shall accept any money, or any matter or thing, or any promise of reward, as remuneration for or inducement to accept any such offer of composition, shall forfeit:—

- (a) A sum equal to the whole of the debt he originally proved against the estate.
- (b) The amount of all moneys or other things that he shall have received by way of remuneration or inducement as hereinabove set forth.
- (c) The amount of whatever shall have been paid or secured to him by virtue of the composition.

NOTES.

In *Von Plaster's Creditors vs. Jones, Rudd & Co.* (2 E.D.C. 122), a wife gave to a creditor two promissory notes as a consideration for or inducement to the creditor to forbear opposing the rehabilitation of her husband, an insolvent, who managed a business carried on in the name of his wife, to whom he was married out of community of property. The insolvent was present at the transaction (the giving of the notes), and took part in its negotiation, though, as he alleged, only as agent for his wife. The creditor received the notes upon the said consideration, withdrew his opposition, and the insolvent received his discharge. It was held that the giving of these promissory notes must be deemed and taken to have been in law the act of the insolvent himself.

111. Such action for the recovery of the moneys as above, or other things, may be instituted by anyone who was a creditor at the time of the acceptance of the composition, on behalf of himself or all other persons, who at the aforesaid time were creditors, and who shall, within twenty-eight days after he had given notice in the *Staatscourant* of his intention to institute an action, join with him and bind themselves to accept joint liability with him for the costs of the suit.

112. It shall not be necessary to set forth in the said notice the name of the person against whom such action is intended to be taken, but simply to notify that legal proceedings will be commenced in accordance with the provisions of § 110, in a certain matter, the particulars of which may be more fully ascertained from the person subscribing the notice.

CHAPTER VI.*Liquidation of the Estate.*

113. All costs incurred under any sequestration shall in the first place, before any other debt, be paid out of the free residue of the insolvent estate.

When the said free residue shall be insufficient for the payment thereof, all the creditors who have proved their claims against the estate shall be personally liable, in proportion to the amount of the claims so proved, for the amount unpaid.

The creditors, however, shall not be liable for any claims by persons employed by the trustee in relation to any suit or action at law affecting the said estate, except in so far as the trustee shall have acted under their instruction.

Such persons shall have recourse for their claims on the said estate or on the said trustee.

The costs incurred for the realisation of any portion of the estate over which any creditor shall hold any special mortgage as security for his claim, shall be paid out of the proceeds of such property, and when the proceeds shall be insufficient for the same, such creditor shall be personally liable.

Costs of sequestration incurred for other purposes shall in the latter case not be recoverable from the proceeds of such property.

NOTES.

The costs of a voluntary surrender are treated as part of the costs of sequestration, and as such are payable by the trustee (*Du Preez vs. Botes' Trustee*, 2 J. 386).

The trustee of an insolvent estate, who had been arrested and detained in a foreign country on account of a claim connected with his administration of the estate, was held not to be entitled, without special authorisation from the creditors, to charge the estate with damages sustained by him in consequence of such detention (*In re Reinach*, 2 G.W.R. 134).

Creditors who have proved on an insolvent estate in which there is a contribution account are liable to contribute, although the expenses were incurred before they filed their proofs (*Standard Bank vs. Biden's Trustee*, 2 G.W.R. 222).

Special mortgagees are not liable for a *pro rata* share of costs incurred in an unsuccessful action, to the bringing of which they refused their assent (*S.A. Association vs. Van der Spuy's Trustee*, B. 1870, p. 49).

The costs of a voluntary sequestration (which, as above stated, are preferent) must, after proper taxation, be paid out by the trustee as part of the costs of the estate, and not proved as a debt (*Van Zutphen vs. Macfarlane*, 3 C.L.J. 92).

So long as it is not shown that the opposition to an application for a person's compulsory sequestration is *malâ fide*, the costs of such opposition will be included in the costs of sequestration (*Ballot vs. Strobel's Trustee*, O.R. 1897, p. 234).

In *Rolfes, Nebel & Co. vs. Norris* (O.R. 1897, p. 469), the applicants for sequestration had consented to the discharge of the provisional sequestration of the respondent's estate, the respondent having paid the whole of applicants' claim. It was held that applicants must pay all costs, inasmuch as they were responsible for such costs having been incurred.

114. The trustee of any insolvent estate shall as soon as may be, and not later than six months after the confirmation of his appointment, frame and lay before the Master of the High Court, unless the Master of the said Court, upon his application stating the grounds thereof, of which application he must give at least fourteen days' notice previously in the *Staatscourant*, shall grant further time for that purpose:—

I. An exact account of the said estate, stating—

- (a) The proceeds of all sales.
- (b) The amount of all debts collected.
- (c) An account of all debts still outstanding.
- (d) An inventory of all property and effects still unsold.
- (e) All debts due by the estate.

II. A general plan for the distribution of the assets of the estate, stating—

- (a) Such creditors as are preferent by law in the order of their legal preference.
- (b) The concurrent creditors, and balance which remains for division among them.

NOTES.

Trustees sold land belonging to an insolvent estate, and credited the account, which was not the final one, with the purchase price, although it had not yet been received. The purchaser became insolvent, and the sale was cancelled. The Court allowed the trustees to debit the estate with the amount in their next account (*In re Cerfontijn*, 4 J. 157).

The period allowed to trustees of an insolvent estate, within which to file their account, having elapsed, and no extension of time having been applied for, the Court, on the application of a creditor, ordered an account to be filed, notwithstanding the allegation by the trustees that the funds in their hands were comparatively small, and that legal proceedings were pending relative to assets of the estate (*London and South African Bank vs. Stratford's Trustees*, B. 1875, p. 123).

The Cape Supreme Court (*In re Maskell*, B. 1873, p. 28) granted an order of personal attachment against a trustee for not complying with an order of Court to file their liquidation and distribution account.

115. When the place of residence of any insolvent shall be outside the limits of the district of Pretoria, the trustee shall, before laying the account and plan aforesaid before the Master of the High Court, lay the same before the Landdrost of the district, or the Special Landdrost of the public diggings where the estate is situated, in whose office it shall remain for the inspection of creditors for at least seven days.

Every Landdrost or Special Landdrost shall cause to be affixed in some public place, in or about his office, a list of all such accounts and plans as aforesaid lodged in his said office, together with the dates of their intended transmission to the Master of the High Court.

116. The account and plan of distribution before-mentioned shall also lie open at the office of the Master of the High Court for the inspection of creditors for a reasonable time, to be appointed by the said Master, not being less than fourteen days from the date at which the trustee or trustees of the said estate shall cause notice thereof to be given in the *Staatscourant*.

117. It shall be lawful for the insolvent, or any party interested in the estate under sequestration, within the time aforesaid, to enter objections against the said account and plan of distribution in writing with the said Master of the High Court, stating the grounds thereof.

And it shall also be lawful for the High Court to permit such objection to be entered at any time before the final confirmation of the said account and plan upon sufficient cause to be shown to the satisfaction of the said Court, and upon such terms as the Court shall impose.

NOTES.

A proof of debt upon an insolvent estate was admitted, but the trustees in error omitted to award dividends in the first and second accounts, both of which were confirmed. The third account was filed, and no dividend was awarded therein. Before confirmation thereof the creditor moved to have it amended, so that, out of the moneys available, the dividends due on the first and second accounts should be awarded to him, and out of the balance a *pro rata* dividend should be awarded him, as due on the third account. The Court granted the order (*Union Bank vs. Ruperti's Trustees*, 4 J. 444).

118. Any person lodging objections to the said account and plan of distribution shall call upon the trustee, and also upon the party whose interest may be affected thereby, to appear before the High Court and to show cause why the plan shall not be altered or amended.

The hearing and adjudication by the High Court of such objection must take place within a period of fourteen days after such objection has been lodged; and in default of any such hearing and adjudication, the objection shall be deemed to have lapsed.

The said Court, after hearing the parties respectively, shall make such order as to them shall seem just.

When however any alteration or amendment in the plan shall be ordered by the said Court, whereby the interest of any party who has not made appearance in the said Court shall be affected, the same shall again lie open for inspection of the creditors, after notice thereof as aforesaid.

119. If no objection has been lodged against the account and plan of distribution, the Master of the High Court shall confirm the same.

If objections have been lodged, then the High Court, after hearing such objections, shall decide upon the same, and upon the confirmation of the said account.

Such confirmation either by the High Court, or by the Master of the High Court, shall have the effect of a final sentence, except against such creditors as shall afterwards be admitted by the said Court in manner hereinbefore provided to prove their debts and rank upon the said estate at any time before the final distribution thereof.

NOTES.

If the free residue of an insolvent estate is insufficient to pay the costs of sequestration, the confirmation by the Court of the trustee's plan of distribution has not the effect of a final judgment as against the creditors who have proved their claims, and who are specified in such plan as being liable to contribute *pro rata* towards payment of such costs (*Steyn's Trustee vs. Gous*, 11 J. 348).

A creditor on an insolvent estate for funeral expenses, who has proved his claim, cannot sue the trustee for the amount due to him, before the liquidation and distribution account has been filed (*Tiffin vs. Harsant*, B. 1876, p. 50).

A proof of debt had been made upon an insolvent estate and had been admitted as correct by the trustees, in so far as it appeared upon the first account filed by the trustees. This account had been confirmed by the Court, but nothing was awarded therein in respect of the said proof, and the final account had not been filed. The trustees then applied to have the proof of debt expunged. It was held that a defence that the confirmation had the effect of a final judgment could not be pleaded to the claim by the trustees (*Brink's Trustees vs. Van Reenen*, 5 S. 151).

The ignorance of a creditor, who has proved upon an insolvent estate, that the plan of distribution lay for the inspection of the creditors, and was duly advertised and afterwards duly confirmed by the Court, is not sufficient to entitle him to have the order of confirmation set aside and a preference awarded to him in respect of his proof as a preferent debt (*Stewart's Assignee vs. Wall's Trustee*, 3 J. 243; *Struben vs. Moller*, O.R. 1894, pt. 3, p. 5).

120. After confirmation of the said account and plan of distribution, the trustee shall distribute the said estate according thereto.

During the continuance in office of the said trustee, any creditor may claim payment of any dividend due to him by motion in the High Court or any Circuit Court.

NOTES.

The Court will sanction the issue of a writ of execution against a trustee of an insolvent estate after confirmation of the liquidation account (*Kunhardt's Executors vs. Lucas*, 1 R. 349).

121. If it shall be found impracticable from the nature of the said estate, or from other causes, to frame the plan of distribution so as to arrange the distribution of the whole of the insolvent estate according thereto, it shall be lawful for the trustee, as soon as may be, and in no case later than six months after the confirmation of the plan, unless further time be given for that purpose as before set forth, to frame and lay before the Master a scheme of provisional distribution, which shall contain a return of all such matters hereinbefore required in regard to the plan of distribution in the 114th Article of this Law mentioned, in so far as the condition of the estate shall permit.

He shall further act in accordance with the same rules in respect of his plan of provisional distribution, and after confirmation of the same, shall cause the distribution to be made in accordance with the same rules as are hereinbefore prescribed in regard to the said plan of distribution.

NOTES.

It is the trustee's duty to apply to the Court as soon as practicable for an extension of time within which to file his account. Any person interested in an insolvent estate, who succeeds in an action against a trustee who has filed an account after the lapse of the limit of six months, is entitled to his costs, no matter what the trustee's reason may be—provided that the trustee has not obtained an extension of time (*Norden vs. Brink*, 3 M. 270).

122. When after such provisional distribution it shall happen that any residue remains over for distribution, the trustee shall, as soon as may be, but in no case later than six months after the lapse of the six months above fixed by Article 121, unless, as above, further time be given for that purpose, file and give effect to a second such scheme of distribution, and so on from six months to six months until the whole estate shall have been finally distributed.

123. The trustee shall, together with the account and plan of distribution of the estate, deliver to the Master of the High Court a duplicate or copy of the said account and plan of distribution, and in default thereof he shall be deemed not to have filed any account and plan of distribution at all.

124. The Master of the High Court shall endorse upon each such copy or duplicate lodged with him the date upon which the account or plan of distribution has been confirmed, and shall examine or cause the same to be examined, and shall authenticate the same by affixing his signature thereunto.

125. He shall further, as soon as may be after the end of each month, transmit all such duplicates and copies received by him to the Landdrosts of the districts, or to the Special Landdrosts of the public diggings in which the estates are situated.

126. The Landdrosts and Special Landdrosts shall register and file all such copies or duplicates at their respective offices, where any person may, on any day except Sundays and holidays, inspect and take copies of the same.

127. A copy of any original account or plan of distribution, or of a duplicate thereof, being duly signed and certified by the Landdrost or Special Landdrost as a true copy, and authenticated by the Master of the High Court, or by the Landdrost or Special Landdrost, as the case may be, shall be received in evidence in any Court, or by any person who by law, or by the consent of parties, is declared competent to take evidence.

128. Whenever any dividend is payable, the trustee shall give notice thereof in writing to all the creditors whose claims have been proved, as well as a public notice in the *Staatscourant*, stating that such dividend is in the course of payment, and calling upon all creditors entitled thereto to apply for and receive the same.

In case any dividend shall remain unclaimed for the space of six months after the date of such notice, the trustee shall, should he still continue in office, or the Master of the High Court, should the said trustee have been discharged, pay such unclaimed dividend into the Orphan Chamber Fund to the credit of the parties entitled thereto. Such payment shall be subject to the provisions of Law No. 12 of 1870, "Orphan Chamber Law" (now Proclamation 28, 1902).

When a trustee neglects to pay such dividend into the hands of the Master of the High Court, the said Master may summon him before the High Court or any Circuit Court to answer for such neglect.

The said Court shall summarily make such decision, and it shall be lawful to adjudge the trustee to pay into the Treasury, for the benefit of the Treasury, such sum as to it shall seem meet, not exceeding the amount of the dividend unduly detained.

NOTES.

Misappropriation or misapplication of the assets or dividends of an insolvent estate by one of the co-trustees without the knowledge and consent of his co-trustees does not discharge them of their liability to the creditors for such assets (*In re Crause*, 3 M. 257).

See *In re Maskell*, under § 114, above.

129. It shall be lawful for the Master of the High Court at all times after the confirmation of the account and plan of distribution, to call upon the trustee for accounts of what dividends have been paid. Any neglect or refusal on the part of any trustee by means of receipts, or other sufficient evidence, to prove the payment of any given dividend, shall be considered *prima facie* proof that the sum has not yet been claimed.

130. It shall be lawful for the said Court, in case of disobedience by any such trustee to any order or decision of such Court made by virtue of the 120th and 129th Art. of this Law, to direct the sum in question to be recovered by attachment and sale of the goods of the said trustee, with or without his committal to prison until he shall have obeyed such order or decision of the Court.

NOTES.

See *In re Maskell*, under § 114, above.

131. Any residue of the insolvent estate which may remain after the payment of all claims thereupon, shall be paid to the insolvent or his lawful assignees.

To the insolvent shall also be restored the property in all debts and other assets belonging to the estate which may then remain or be outstanding.

NOTES.

Upwards of thirty years after the surrender of an insolvent estate an asset of the estate, which had not been mentioned by the insolvent in his schedules, was discovered and sold. It was held that his legal representatives (the insolvent having died in the interval) were not entitled to claim the proceeds or any part thereof until payment of all the claims which had been proved (*In re Parker*, 16 J. 529).

The insolvent is not entitled to receive any surplus awarded to him by the plan of distribution until he has received his rehabilitation, and in the meantime it is competent for the creditors to prove their claims subject to the provisions of § 46 of the Transvaal Law (*Union Bank Liquidators vs. King's Trustee*, 10 J. 101).

CHAPTER VII.

Discharge of the Order of Sequestration and Rehabilitation of the Insolvent.

132. The insolvent may, when an offer of composition made by him has been accepted by his creditors, immediately upon the acceptance of such offer of composition, but otherwise not before six months have elapsed from the date of the final distribution of his estate, make application to the High Court for his rehabilitation.

In each case notice of such application shall have to be given at least six weeks previously, in writing, to the Master of the High Court, to the trustee of the estate, and by public advertisement in the *Staatscourant*, or in any other manner which the Court shall provide.

NOTES.

An offer made by an insolvent to pay his concurrent creditors a certain proportion of their claims, and to remain liable on the preferent claims against his estate, which offer was duly accepted by the creditors of the estate, is such a composition as entitles the insolvent to obtain a discharge from insolvency in terms of § 106 of the Cape Ordinance, or a rehabilitation under § 132 of the Transvaal Law (*Ex parte Russouw*, 12 J. 172).

An insolvent, in whose estate no creditors have proved claims, must, in applying for the release of his estate from sequestration, give notice of his application to his creditors by a publication in the *Government Gazette* (as stated in § 132 of this Law), and he must make an affidavit of full and fair surrender (*Ex parte Van Broemtsen*, 12 J. 239).

An insolvent who has made a composition with his creditors must, in giving notice of his intention to apply for his rehabilitation, state that he applies in terms of § 132 (*In re Teich*, 13 J. 184).

The only provision of the existing Transvaal Law for obtaining the release of an insolvent estate from sequestration is by means of rehabilitation under § 132 (*Ex parte Grey* [1902] T.S. 282).

133. Before making any such application as in the last preceding section mentioned, the insolvent shall give sufficient security, up to the sum of £25, to the Registrar of the High Court, for the payment of the costs of any person who may appear to oppose such rehabilitation, and to whom the Court may award his costs.

134. Every insolvent applying to the Court, as aforesaid, for his rehabilitation, shall make and submit a sworn declaration in writing that he has made a full and fair surrender of his estate, and has not granted or promised any preference or security, or

made or promised any payment, or entered into any secret agreement or collusive arrangement with intent to persuade his trustee or any creditor not to oppose his rehabilitation.

135. Upon the day fixed for the hearing of such application it shall be lawful for the trustee, or any of the creditors, or other person interested in the estate, to appear in person or by counsel to oppose the granting of the rehabilitation aforesaid.

The Court may, whether the rehabilitation of such insolvent be opposed or not, grant or refuse to grant such rehabilitation, or suspend the granting of the same, or annex such conditions thereto as the justice of the case may require.

The Registrar of the High Court shall forthwith give notice to the Master of the High Court of every rehabilitation of an insolvent granted by the said Court.

NOTES.

The trustee may appear to oppose the rehabilitation, even if all the creditors consent to it (*Ex parte Steyn*, 13 J. 314).

If the surrender or sequestration has taken place in one Court, and rehabilitation is applied for in another Court of concurrent jurisdiction, the Court to which application for rehabilitation is made will not grant it except with all the information before it, and for that purpose certified copies of the proceedings in insolvency must be handed over to the Registrar of the latter Court (*In re Isenberg*, 15 J. 104).

An application having been made for the rehabilitation of an insolvent, in whose estate no creditors had proved at the first and second meetings, and no trustees had been appointed, and the usual six weeks' notice having been given in the *Government Gazette*, the Court directed the Master to call a third meeting. Subsequently to this meeting (at which no creditors appeared), a second application for rehabilitation was made, but no further notice to the creditors had been given. The Court ordered a fresh notice of six weeks to be given, and the application to be then renewed (*In re Olsen*, 3 G.W.R. 73).

Creditors are entitled to oppose an insolvent's rehabilitation, and are justified in doing so, where they can bring to the notice of the Court any facts which might possibly have been brought forward by the insolvent's counsel. In such a case, costs will be allowed to the creditors so opposing (*In re Jansen*, 9 C.L.J. 115).

Where applicant's estate had been placed under sequestration, but nothing had been done beyond the election of a trustee and the filing of claims, the Court granted an order setting aside the original order for sequestration (*Ex parte Davis* [1903], T.S. 83).

Though the practice is for the Court to treat a partnership so far as applications for rehabilitation are concerned as a separate *persona* in law, and to grant its rehabilitation as such, the law does not allow the rehabilitation of a partnership estate so far as only one partner is concerned (*Ex parte Gerstle* [1903], T.S. 881).

136. An insolvent who committed an act of fraudulent insolvency, or who has been guilty of any fraudulent transaction, to the prejudice of any of his creditors, or of any transaction specified under Article 141 of this Law, shall not be entitled to rehabilitation.

137. No rehabilitation shall be granted to any insolvent until the Court shall have satisfied itself that no injury or wrong will be done to any person who, having been allowed by the said Court to make any claim against the estate, has not yet proved his debt against the said estate at the time of the making of the application for the rehabilitation of the insolvent, and until such time as the Court shall have ascertained, by putting the insolvent to his oath, or otherwise, whether there are or are not other creditors who, by reason of their absence from the Republic, or for other reasons, have not yet proved their lawful claims against the said estate.

When it shall appear to the said Court that there are still such creditors, the said Court shall not grant the rehabilitation until such time as the Master of the High Court shall have certified to the said Court that the amounts due to such creditors have been paid to him, or that the said amounts have been deposited with him or with some other person to his satisfaction for and on account of such creditors, such amounts being the same as such creditors would have been entitled to in accordance with any offer of composition, or in accordance with the plan of distribution of the estate in case they had proved their debts.

138. When a creditor on whose behalf, as above stated, any sum of money or any other matter or thing had been reserved or secured, shall not prove his right thereto within such reasonable time as the Court shall provide, the said Court shall, upon the application of any person interested in the said estate, order that such sum of money, or such other matter or thing, shall, after deduction of the costs for and on behalf of the person making such application, be divided in proportionate shares among the remaining creditors.

139. The effect in law of every rehabilitation of an insolvent shall be to discharge the estate of the said insolvent from sequestration, and to reinstate such insolvent in all the personal rights he enjoyed before the sequestration of his estate, and to discharge all the debts of the said insolvent existing at the time of

the granting of the order of sequestration, save and except such claims as the creditors shall have against him by virtue of any offer of composition accepted by them, and which shall still remain unsatisfied.

NOTES.

Rehabilitation is a complete discharge of all debts incurred before insolvency. If an insolvent afterwards undertakes to pay his old debts, such new contract must be sued upon, and not the original liability (*Quin Bros. vs. Van der Merwe*, 9 J. 217).

A testator bequeathed the usufruct of a certain sum of money to his wife during her life, and directed that on her death the money should go to the children of the marriage in equal shares. One of the children became insolvent in 1861. In 1862 the account and plan of distribution in his estate were confirmed by the Court. In 1866 the insolvent was rehabilitated, the deficiency in his estate being £1,081. His mother died in 1870, having by her will appointed all her children joint heirs of her estate. The testator predeceased her in 1861. The Court held that before the making of the order confirming the account and plan of distribution the insolvent's right to receive his share of the inheritance on the death of his mother was a future estate, which became legally vested in his trustee, who was entitled to recover the insolvent's share of inheritance, notwithstanding the intermediate rehabilitation (*Quin vs. Board of Executors*, B. 1870, p. 78).

140. No creditor shall by reason of the rehabilitation of any insolvent be deprived of his right to claim from any person, who is bound to him as a surety for the insolvent, the balance of any debt in respect whereof the suretyship was entered into.

NOTES.

A passed a bond in January, 1826, for £150 to plaintiff, and as security ceded and delivered in pledge a bond dated January, 1821, by C for £175, with defendant as surety and co-principal debtor. A surrendered. The £150 bond was proved in his estate, and the £175 bond, ceded by his trustees to plaintiff, was now proceeded on to the extent of £150. Defendant was held liable on the £175 bond, notwithstanding that it had not been proved on the estate of C (who had surrendered in 1826), who was subsequently rehabilitated (*Hoets' Executors vs. De Vos*, 2 M. 53).

141. All preferences, gifts, securities, or payments granted, made, promised, or offered by the insolvent to or for the benefit of his trustee or of any creditor, and all secret agreements or collusive arrangements entered into by him with such trustee or creditor with the intent and purpose of inducing such person not to oppose his rehabilitation, shall be null and void.

The trustee or creditor who shall accept any offer made as hereinabove set forth shall forfeit for the benefit of all the other creditors jointly (the creditor who has accepted such offer always excepted) a sum of money equal to double the amount or double the value of whatever he shall have so received from the insolvent.

142. As long as the insolvent is not rehabilitated in manner as above set forth, the sequestration of his estate shall continue in force, even after the final distribution of his estate and the discharge from office of his trustee.

143. Whenever pending such time it shall appear that there are further assets belonging to the estate which were not known at the time of the distribution of the estate, or that the insolvent has acquired fresh assets, whether by inheritance or otherwise, or that the profits made by the insolvent in the business carried on by him, by virtue of Art. 28, amount to more than was strictly necessary for the maintenance of himself and his family, then any creditors who shall have proved any debt upon the estate of any such insolvent may apply to the High Court for an order for the distribution of such assets respectively among the creditors who have so proved their debts upon the estate.

NOTES.

The Court has a discretion as to the issue of a writ of execution under § 127 of the Cape Ordinance (corresponding in principle to § 143 of the Transvaal Law), and will not direct a writ to issue unless there is reason to believe that sufficient assets will be found to give an appreciable dividend to creditors (*Greeff's Trustee v. Fourie's Executor*, 16 J. 576). If there are sufficient assets, the Court will grant such an order, so long as the insolvent has not received his rehabilitation (*Smith vs. Kotze*, B. 1874, p. 137).

144. It shall be lawful for the Court, whenever it shall find that there is a sum of at least £50 available for distribution, after deduction of costs, to order the Master of the High Court to call a meeting of creditors for the election of a trustee, according to the provisions of this Law, who shall be charged with the distribution of such sum.

145. All the provisions of this Law relating to the trustee and to the distribution of the estate shall, *mutatis mutandis*, apply to any such trustee and any such distribution as is referred to under Art. 144.

CHAPTER VIII.

Fraudulent and Culpable Insolvency.

146. An insolvent shall be deemed to be guilty of the crime of fraudulent insolvency, and shall be punished for the same by imprisonment, with or without hard labour, for a period not exceeding seven years :—

- (a) If he, either before or after the making of the order of sequestration, has alienated, mortgaged, pledged, embezzled, concealed or removed anything belonging to his estate to the value of £10 or upwards with intent to prejudice the rights of his creditors.
- (b) If he has concealed or removed, destroyed or mutilated any office books, accounts, receipts, or any other documents relating to his estate, with intent thereby to defraud his creditors.
- (c) If he has fraudulently contracted any debt.
- (d) If he shall, at the second meeting of his creditors, or any adjournment thereof, wilfully file any inventory containing any false statement about his estate or any part thereof, or any debt due to or by him; or
- (e) If he shall produce any office books, accounts, receipts, or any other documents which are false, or on which any erasure or alteration has been made or caused to be made by him, or with his knowledge, with intent to defraud his creditors; or
- (f) If he shall have connived at, or by not at once communicating the fact to the trustee fail to prevent such person from proving a false claim against the estate.
- (g) If at any time when examined by the Court or by the presiding officer, or by any creditor at a meeting of creditors, he makes any false answer to any lawful question with the intent to defraud his creditors.
- (h) If he shall, being summoned to appear in accordance with the provisions of Art. 159, leave the Republic, or otherwise remove himself, or conceal himself with the intent by so doing to avoid the trial referred to under that Article, or to avoid any writ of arrest issued against him under Art. 160.

NOTES.

A warrant may be issued for the arrest of a person charged with fraudulent insolvency even before the provisional order of sequestration of his estate has been confirmed (*In re Jacobson*, 15 J. 392).

Pending trial on a charge of fraudulent insolvency, the Court will order an attachment of goods consigned to the insolvent (if he is charged with alienating property belonging to his estate), and will order letters addressed to the insolvent to be opened in presence of the Master (*In re Robinson*, 4 S. 104).

An insolvent who has been committed for trial on a charge of fraudulent insolvency, and is brought for examination before a commissioner of the Supreme Court, can only decline to answer questions having a tendency to prejudice him on his trial (*In re Holtman*, 3 M. 302).

An insolvent was charged with having fraudulently contracted certain debts to the amount of £60, and was convicted. The charge on the trial of the case (remitted to the Magistrate) did not set forth the persons alleged to have been defrauded, and the amounts to the extent of which it was alleged they had been defrauded. On this ground the conviction was quashed (*Queen vs. Jacobson*, 9 C.T.R. 230).

In a case where two parties are charged with fraudulent insolvency, very slight evidence of the knowledge by one partner of the fraudulent acts of the other is required to justify the conviction of both (*Queen vs. Margolius*, 4 C.T.R. 440).

147. An insolvent shall be deemed to be guilty of the crime of culpable insolvency, and shall be punished for the same by imprisonment, with or without hard labour, for any period not exceeding six months:—

- (a) If he shall fail to attend before his creditors at the first, second or third meetings of his insolvent estate, or shall remain away from any adjournment of any of the said meetings without leave from the presiding officer; or if he fail to attend at any other meeting of his creditors after being duly required to do so.
- (b) If he has kept no adequate or proper books or accounts containing all such entries relating to and exhibiting the nature of his dealings as (regard being had to his particular trade or calling) might reasonably be expected or required.
- (c) If at any meeting of creditors in his insolvent estate, being thereto required by the presiding officer, he cannot account for or discover what has become of any money, security or other property, which shall have been proved to have been in his possession so recently before the sequestration as to make it his duty so to do.

- (d) If he shall not be able, after having been requested in writing by the said trustee so to do, to give a true and sufficient explanation of the cause of his insolvency.
- (e) If he shall have given to any of his creditors an undue preference.
- (f) If he shall have contracted any debt or debts to the amount of £50, without any reasonable or probable expectation of being able to discharge the same.
- (g) Or if he shall have granted, made, or promised to any creditor any gift, payment, security or any other unlawful consideration in order to procure the consent and concurrence of such creditor to any offer of composition, or to prevent opposition to his rehabilitation.

NOTES.

A person found guilty of culpable insolvency in having committed one or more of the seven specific offences mentioned in the foregoing section can be sentenced to any term of imprisonment up to six months for each of the offences for which he is so found guilty (*Queen vs. Keyter*, 12 J. 127). The Court cannot inflict a fine on a conviction of culpable insolvency (*Queen vs. Wolpert*, 9 C.T.R. 328).

(a) An act of culpable insolvency may be committed by the insolvent absenting himself from the second meeting of creditors, although he attended at the first meeting (*Vorster vs. Lilienfeld*, 5 E.D.C. 254).

(b) A butcher was charged with culpable insolvency in not keeping such reasonable and proper books as (regard being had to his particular trade or calling) might reasonably be expected and required. The evidence showed that his books consisted of a cash-book, a day-book, and a journal, with no ledger, and that the cash-book contained many omissions, and for a period of eighteen months had not been balanced. This was held to constitute culpable insolvency (*Queen vs. Wallace*, 12 E.D.C. 189).

(d) Proof must be given that the insolvent was requested in writing by the trustee to explain his insolvency, on trial of a charge brought under this sub-section (*Queen vs. Wallace*, 12 E.D.C. 189).

(f) The term "any debt or debts" under this sub-section must be restricted to debts provable against the insolvent estate (*Queen vs. Klein*, 8 J. 39).

148. Every trustee and every creditor of the estate of any insolvent shall, with regard to the prosecution of any offence of culpable insolvency, which has been committed, have the same right of prosecution which any private person has by law with regard to any offence committed against his person or property.

No creditor shall, however, be entitled to exercise such right without first obtaining from the trustee, and producing a certificate that the trustee declines to institute such prosecution.

NOTES.

It is sufficient for the purposes of prosecution by a creditor under this section if he obtains from the trustee a certificate that he declines to prosecute "at present" (*Vorster vs. Lilienfeld*, 5 E.D.C. 254).

149. The crimes of fraudulent and culpable insolvency shall be tried before a jury.

CHAPTER IX.

Miscellaneous Provisions.

150. Any person who shall alienate, remove, conceal, embezzle, or receive any property belonging to any insolvent estate which has been attached by virtue of any order for the sequestration thereof, knowing the same to have been so attached and with intent to defeat the said attachment, shall be punished by imprisonment, with or without hard labour, for a period not exceeding seven years.

151. Any person who shall accept from any insolvent any alienation, mortgage, or pledge, knowing at the time the same to have been fraudulently made or passed with the intent thereby to prejudice the rights of his creditors, shall be punished by imprisonment, with or without hard labour, for a period not exceeding seven years.

152. When from declarations made under oath it shall appear to the satisfaction of any Judge of the High Court, or of any Landdrost, or of any Justice of the Peace, that there is reason to believe or suspect that property belonging to any insolvent estate is concealed in a house or other place not belonging to the insolvent, it shall be lawful for the said Judge, Landdrost, or Justice of the Peace, upon the application of the Master of the High Court or of the trustee of the estate, to grant a warrant to search for and take possession of the said property. Such warrant shall be executed in like manner as a search warrant for property reputed to be stolen or concealed.

Any property of the insolvent so found shall be delivered to the Master of the High Court, as long as no trustee has hitherto been appointed, or otherwise to the trustee, or to any person appointed by the said Master or trustee to receive the same.

153. Any person, whether actually a creditor or not, who shall be obliged by virtue of the 35th, 37th and 38th Articles to restore the amount of any undue preference which had been granted to him, when such preference was received by such person or through any fraudulent arrangement, mutual agreement, or common consent between such person and the insolvent, shall not be entitled to prove as a debt the amount of the undue preference so restored upon the estate.

154. It shall be lawful for the trustee of any insolvent estate in any suit or action which he may institute against any person for the restoration of the amount of any undue preference, to claim in such suit or action that such person shall be declared by the judgment of the Court to have forfeited, on behalf of the insolvent estate, the amount in which he shall be found to have been unduly preferred by reason of the fraudulent arrangement, mutual agreement, or common consent in the last preceding section mentioned.

In case no such action is instituted as above set forth, but the claim of any such last-mentioned person for the amount so restored be disputed, then such right shall be determined in accordance with the provisions of this Law for the regulation of the proof of debts.

155. In case a creditor has received an undue preference, but under circumstances which do not by virtue of the above Article occasion a forfeiture, viz.: in respect of any bill of exchange or promissory note with recourse on other parties, payable by the insolvent, and in possession of the creditor, or in respect of any debt of the insolvent for which such creditor had any security which by reason of the act of the insolvent constituting such undue preference such creditor has *bonâ fide* given up, or which he has omitted to take legal proceedings to recover, he shall not be liable to restore to the trustee the value of such undue preference, unless the trustee will indemnify him in respect of whatever loss such creditor would sustain in case he were unconditionally condemned to restore the amount or value aforesaid.

NOTES.

This section (155) practically embodies the decision of the Cape Supreme Court in *Thorne's Trustee vs. Friedlander* (B. 1875, p. 81). In that case the creditor, under the direction of the Court, refunded the amount paid to him on a promissory note, on receiving an indemnity from the trustee. The creditor then sued on the indemnity bond. The Court enquired into the position of the indorser of the note (the insolvent having been the maker) at the time the note became due and was paid and given up, and gave judgment for the creditor for the amount which at that time he might have recovered from the indorser (*Friedlander vs. Thorne's Trustee*, B. 1876, p. 72).

156. In case any third party shall *bonâ fide* purchase or otherwise acquire for lawful consideration any bills of exchange, promissory notes, or other money securities, or any goods or effects from any person to whom they have been alienated by the insolvent under circumstances which would, in accordance with the provisions of this Law, make them null and void, then and in such case the rights which such third party so buying or obtaining shall have lawfully acquired in such goods and effects shall not lapse or be impeachable. But the person to whom the same were alienated, as above, shall be obliged to pay the true value of all such goods and effects by him disposed of to any third party, to the trustee of the insolvent estate, for the benefit of the creditors thereof.

157. Whenever in any action for setting aside an undue preference, under and by virtue of Articles 35, 36, 37 and 38 of this Law, it shall be proved that the alienation, payment, mortgage or pledge in respect of which the action is brought, was made or passed within six months of the sequestration of the insolvent's estate, and at a time when the liabilities of the insolvent fairly calculated exceeded his assets fairly valued, it shall be deemed that the insolvent might reasonably have expected the sequestration of his estate at the time, unless the defendant in such action shall prove the contrary.

The evidence of the insolvent alone shall not be deemed sufficient proof to the contrary.

NOTES.

In the case of a bond given within six months of insolvency, the onus lies on the mortgagee to prove that the insolvent did not at the time of passing the bond contemplate the sequestration of his estate, and did not intend unduly to prefer the mortgagee (*Jordaan's Trustee vs. Fletcher & Co.*, 11 J. 43).

158. Every provision of this Law relative to what shall be deemed undue preferences made by an insolvent, shall be deemed and taken to apply to preferences given out of the assets of the estate which they administer by persons lawfully charged with the administration of such estates.

Where such undue preferences as aforesaid have been granted by any person who was lawfully charged with the administration of any estate before the sequestration, the trustee may prosecute either the person legally administering the estate or the person to whom or for whose benefit such undue preference shall have been given, first one and then another, but not both concurrently, for the repayment of the value or amount of any such undue preference. Provided always, however, that he shall in no case recover more than the amount or value of such undue preference, together with his costs and charges.

159. In all cases under Article 103, or in any action instituted between parties relating to and concerning the legality of the debt of any person claiming to be a creditor on the estate, or in respect of the right of any person to have a preference upon any part thereof, it shall be competent for any insolvent to give evidence either in favour of or against the trustee.

160. It shall be lawful for the High Court or any Circuit Court, whenever such Court shall think fit, upon the application of the trustee, to summon the insolvent to appear before such Court or the Commissioner of such Court, to be examined under oath upon all such matters and things as are under Article 55 of this Law referred to.

The said Court or the said Commissioner shall cause every such examination of the insolvent to be reduced to writing, and signed by him, and annexed to the proceedings of his estate.

NOTES.

A Judge of the Supreme Court has taken an examination in the capacity of Commissioner appointed under § 160 (*In re Brink*, 1 R. 338).

161. If any insolvent being duly summoned as aforesaid shall not come at the time and place appointed in the summons for his appearance (without his having proved to the satisfaction of such Court or Commissioner that he was prevented from doing so by some lawful cause), it shall be lawful for such Court or Commissioner to grant a warrant authorising any officer of the law or

other person to apprehend such insolvent and bring him before such Court or Commissioner, or to lodge him in any prison, therein to be detained until the time which such Court or Commissioner shall have appointed anew for his examination upon application of the trustee.

In the latter case the gaoler of every such prison shall be bound to produce the said insolvent before the Court or before the Commissioner aforesaid.

NOTES.

An insolvent who is suspected of being about to abscond may be called upon to give bail for his appearance, and in default may be arrested (*In re Edwards*, 1 R. 41).

162. If any insolvent shall at the second meeting of creditors, or any adjournment thereof, being thereunto required, refuse to lodge a true inventory of his estate, as provided by Article 54, or to surrender the books, accounts, vouchers or other documents as provided by the same Article, or shall at any meeting of creditors, or before the Court or the Commissioner of such Court as aforesaid, refuse to be sworn, or shall refuse to answer any lawful questions put to him by such Court or such Commissioner, or by the presiding officer, or by any creditor, touching any of the matters provided for under Article 55, or shall without lawful cause refuse to sign or subscribe his examination so reduced into writing as aforesaid, it shall be lawful for the Court or the Commissioner or the presiding officer, by warrant under their hand, wherein shall be set out whatever questions the insolvent may have refused to answer, to commit him to such prison as the Court or presiding officer shall think fit, there to remain without bail until he shall withdraw his said refusal.

NOTES.

This section practically embodies the decision *In re Holtman* (3 M. 302). The insolvent can only refuse to answer questions having a tendency to prejudice him on his trial; otherwise it is the duty of the Commissioner to commit him for contempt, in case of refusal.

163. It shall be lawful for the High Court or any Circuit Court after the sequestration of any estate, upon the application of the trustee, to summon before the said Court, or the said Circuit Court, the wife of the insolvent, or any person known or suspected to have in possession any of the estate of the insolvent or to be indebted to the insolvent, or any person whom the Court may see reason to believe capable of giving information concerning the person, trade, business or estate of such insolvent, or any infor-

mation material to the full disclosure of the affairs of the estate, to appear before the said Court, and at the same time order him or her to produce any books, accounts, vouchers or any other documents in his or her custody which may appear to the said Court necessary to establish or verify any fact affecting the estate.

The said Court or its Commissioner may examine every such person upon oath, and shall cause his or her examination to be reduced to writing, and signed by him or her, and annexed to the documents relating to the estate.

NOTES.

The Court will not grant an order in general terms for the examination of persons before a Commissioner appointed under the Insolvency Law. The persons to be examined must be indicated (*In re Basson*, B. 1874, p. 145).

164. If any such person shall, upon being lawfully summoned, fail to appear at the time and place appointed in the summons, without having proved to the satisfaction of the Court or Commissioner before whom such person is summoned that he was prevented from so doing by some lawful cause, it shall be lawful for such Court or such Commissioner under his hand to grant a warrant, authorising any officer of the law or other person to apprehend the person so summoned, and to bring the said person before such Court or such Commissioner, or to commit the said person to any prison, therein to be detained until the time which such Court or Commissioner shall on the application of the trustee appoint anew for his or her examination.

In such latter case the gaoler of any prison shall be bound to produce such person before such Court or Commissioner.

165. If any such person so summoned or brought before the Court or Commissioner for examination shall refuse to be sworn, or shall refuse to answer any lawful question put by such Court or Commissioner touching any of the matters upon which he is being examined, or shall refuse to sign his or her examination so reduced into writing as aforesaid, not having any lawful ground of excuse, or shall not, being thereunto required, produce all books, accounts, vouchers, and other documents, to the production of which there shall be no legal objection, it shall be lawful for the Court or the Commissioner by warrant, stating the questions he may have refused to answer, to commit such person to such prison as they shall think fit, there to remain without bail until such person shall withdraw his said refusal.

166. The trustee shall supply the insolvent and every other person summoned to appear before the High Court or the Circuit Court or a Commissioner, to be examined as above, with pecuniary compensation in like manner as by law required upon service of a subpoena to a witness in any civil suit.

Such compensation shall also be allowed to every insolvent for his attendance at any meeting of creditors, other than the first, second and third meetings, or any adjournment of any such meetings, at which he has been required to be present by the presiding officer.

167. Every insolvent or other person, who on being examined as above shall wilfully make any false answer to any lawful question put by such Court, Commissioner or presiding officer, or any creditor, shall be deemed to have committed the crime of perjury.

168. It shall be lawful for the insolvent or any person committed to prison as aforesaid under the provisions of Articles 160, 161, 164, 165 of this Law to make application to the High Court or any Circuit Court to be discharged from custody. It shall be lawful for the Court to order his discharge either on the ground of any illegality or informality in the form of the warrant, or if it shall appear on examination that the said insolvent or other person had a lawful reason for refusing to answer.

169. In case any suit or action shall be instituted against the Commissioner or presiding officer by reason of any commitment to prison of the insolvent or other person, the said Commissioner or said presiding officer shall possess in reference to such action and the proceedings therein the same rights and obligations as are by law allowed to and imposed on Justices of the Peace for anything done by them in the execution of their office.

In case the action shall be instituted by reason of a commitment to prison for refusing to answer questions, the Court shall take into consideration the whole examination of which such question formed a part.

170. At any time after the plan for distribution of any insolvent estate has been confirmed, or after the distribution of the estate has been directed to be made under the provisions of the 46th Article, and before the insolvent shall have obtained his rehabilitation, it shall be lawful for the Master of the High Court,

the trustee, or any creditor, to apply to the High Court or any Circuit Court for the process of the said Court for the civil imprisonment of the said insolvent; provided the insolvent shall first have been duly summoned to appear before such Court.

Upon proof to the satisfaction of the said Court that the said estate is not sufficient to discharge the debts proved or provable against the said estate aforesaid, it shall be lawful for the Court to grant such civil imprisonment absolutely or conditionally, or reject the same. If the application for civil imprisonment has been made by one or more creditors, and the said Court shall suspend the same upon the condition of the insolvent paying any sum of money, such payment shall be made to the trustee, and if there be no trustee in office, then to the Master of the High Court, for the benefit of the said creditor or creditors, or of such other creditors as shall before distribution claim to be admitted to a share thereof.

NOTES.

This section of the Law is not intended to apply to cases of moral misconduct on the part of an insolvent, but is only applicable where there are assets within his possession or means of attainment, as a means of enforcing payment to creditors (*In re Kerner*, 1 S. 105).

A decree of civil imprisonment was granted against an officer on half-pay, who had surrendered his estate after the plaintiff had obtained judgment against him for damages for libel of a most malicious nature, which defendant had entirely failed to justify, the defendant being in receipt of half-pay at the rate of £91 5s. per annum. The Court, in decreeing civil imprisonment, took into consideration the circumstances of the original libel (*Blake vs. Barrow*, 3 M. 152).

171. At any time after the plan for distribution of any insolvent estate has been confirmed, or after the distribution of the said estate has been directed under the provisions of Art. 47 of this Law, and before the insolvent shall have obtained his rehabilitation, it shall be lawful for such insolvent to apply by motion to the High Court or to any Circuit Court for an order declaring that he shall not be liable to process of civil imprisonment as above set forth.

At least six weeks' notice of the day on which such motion is to be made shall be given by advertisement in the *Staatscourant*.

172. Upon the making of such motion any creditor of the insolvent estate, whose claim has not been fully satisfied and paid, may object to the said order.

The Court may either grant the application conditionally or unconditionally, or reject the same.

Every such order granting such application shall have the same effect of protecting the prisoner against any decree of civil imprisonment as his rehabilitation would have had. Every creditor, however, shall retain his right to prosecute his claim in accordance with the provisions of this Law against all present and future assets of the estate.

If it be proved that any such order as aforesaid was fraudulently or unduly obtained, it shall be lawful for such Court to recall the same.

173. It shall be lawful for the High Court from time to time, as often as it shall think fit, to make such rules, orders and regulations for carrying this Law into effect, and also touching the manner and form of proceeding, as it shall consider advisable.

174. In all cases in which, in accordance with the provisions of this Law, the co-operation or decision of the High Court shall be deemed to be necessary, such co-operation or decision may be given by a Judge in Chambers. From every such decision given by any Judge in Chambers as hereinabove set forth, there shall be an appeal to the full High Court.

175. The Master of the High Court shall, at the cost of the State, publish every three months in the *Staatscourant* :—

- (a) An alphabetical list, giving the name and place of residence of every unrehabilitated insolvent, the account and plan of distribution of whose estate has not yet been confirmed; also the date at which the order for the sequestration of the estate was granted.
- (b) An alphabetical list, giving the name and place of residence of every unrehabilitated insolvent, the account and plan of distribution of whose estate shall have been confirmed, together with the date of such confirmation.

176. The Master of the High Court shall enter of record and have the custody of all documents relating to every registered estate.

The insolvent or any creditor who has proved his debt shall at all reasonable times have inspection of the documents, and be permitted to take extracts or copies therefrom. Extracts of such proceedings signed by the Master shall be received as evidence in all Courts of Justice within this Republic.

177. The Landdrosts in their respective districts, the Special Landdrosts in the public diggings, and the Resident Justices of the Peace, shall give their aid in the administration of this Law, and to that end shall do whatever may be required of them by any rule or order of the High Court granted or made under the provisions of this Law.

178. The High Sheriff and his Deputy Sheriffs, as also the Messengers of the Landdrosts' Courts, being thereunto required by the Master of the High Court, shall perform all such duties as may be required of them within their respective districts under the provisions of this Law.

And they shall receive such remuneration for their services out of the assets of the insolvent estate as shall be fixed by the High Court.

179. This Law shall apply to every estate which was placed under sequestration before the coming into operation thereof, in so far as it shall be possible to apply the provisions hereof having regard to the condition of the estate at the time of such coming into operation as aforesaid.

The rights of any person to any property lawfully attached by reason of any action which such person may have instituted at the time of the coming into operation of this Law, and all suits or actions-at-law pending in the Courts at such time as aforesaid, shall be adjudicated upon and determined in accordance with the provisions of Law No. 21 of 1880.

The crimes made punishable by Law No. 21 of 1880, and committed before the coming into operation of this Law, shall be prosecuted and punished in accordance with the provisions of the said Law 21 of 1880.

180. The word "estate" in this Law shall, within the meaning of this Law, comprise all present and future property, whether movable or immovable, personal or real, and all rights of whatsoever description to such property, wherever they may be found to exist, belonging to or due to the insolvent at the time of the granting of the order of sequestration, or which shall subsequently at any time before rehabilitation be acquired by or become due to such insolvent. (Save and except such as are under §§ 28 and 32 referred to.)

181. All enactments inconsistent with the provisions of this Law are hereby repealed.

182. This Law shall come into operation on January 1st, 1896.

PART 1.—PROCEDURE.

B.—ARBITRATION.

ORDINANCE No. 24 of 1904,

To Provide for the Settlement of Differences by Arbitration.

PRELIMINARY.

1. So much of any law as is repugnant to or inconsistent with the provisions of this Ordinance shall be and is hereby repealed.

2. In this Ordinance, unless a contrary intention appears :—

“submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

“Court” means the Supreme Court, the Witwatersrand High Court and any Circuit Court hereafter established in this Colony.

“Judge” means a Judge of the Supreme Court.

“official referee” means a referee appointed by the Court or a Judge thereof.

“special referee” means any particular person appointed to be a referee in any particular matter.

REFERENCES BY CONSENT OUT OF COURT.

3. A submission, unless a contrary intention is expressed therein, shall be irrevocable except by leave of the Court or a Judge or by consent of all the parties thereto, and shall have the same effect in all respects as if it had been made an Order of Court.

4. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the Schedule to this Ordinance so far as they are applicable to the reference under the submission.

5. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any Order of Court or a Judge, hear and determine the matters agreed to be referred.

6. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any Court, against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may, at any time after appearance, and before delivering any pleadings, or taking any other steps in the proceedings, apply to that Court to stay proceedings, and that Court or a Judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

7. Criminal matters, so far as the prosecution or punishment thereof is concerned, shall not be submitted to arbitration, nor without special leave of the Court shall any of the following matters be submitted to arbitration, namely :—

- (a) matters relating to status ;
- (b) matrimonial causes ; or
- (c) matters in which minors or other persons under legal disability may be interested.

8. In any of the following cases :—

- (a) where a submission provides that the reference shall be to a single arbitrator and all the parties do not after differences have arisen concur in the appointment of an arbitrator ;

- (b) if an appointed arbitrator fails or refuses to act or is incapable of acting or dies, and the submission does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy ;
- (c) when the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him in any case where such appointment is requisite for the decision of the matters in dispute or the due conduct of the arbitration ;
- (d) when an appointed umpire or third arbitrator fails or refuses to act or is incapable of acting or dies, and the submission does not show that it was intended that the vacancy should not be supplied and the parties or arbitrators do not supply the vacancy ;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint, or, if agreement be necessary, to agree in the appointment of an arbitrator or umpire or third arbitrator.

If the appointment is not made or agreed to, as the case may be, within seven clear days after the service of the notice, the Court or a Judge may, on application of the party who gave the notice, and upon notice to the other party, appoint an arbitrator, umpire or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

9. When a submission provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention :—

- (a) if either of the appointed arbitrators fails or refuses to act or is incapable of acting or dies, the party who appointed him may appoint a new arbitrator in his place ;
- (b) if on such reference one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent ;

provided that the Court or a Judge may set aside any appointment made in pursuance of this section.

10. Every arbitrator and umpire must be and continue throughout the reference to be disinterested with reference to the matters referred, and the parties to the reference and any party to a reference may require any arbitrator or umpire to make a sworn declaration before beginning or continuing his duties as such arbitrator or umpire that he has no interest, direct or indirect, in the matters referred, or in the parties to the reference, and knows of nothing disqualifying him from being impartial and disinterested in the discharge of such duties ; provided always that any party may expressly waive any right to object to any arbitrator or umpire on the grounds of interest or the like.

11. The Court may at any time, upon motion, remove any arbitrator or umpire against whom a just ground of recusation is found to exist, or who has misconducted himself in connection with the matters referred to arbitration.

12. The arbitrator or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power :—

- (a) to administer oaths, or to take the affirmations of the parties and witnesses appearing ; and
- (b) on the application of either party to appoint a Commissioner to take the evidence of a person residing outside the Colony, and forward the same to arbitrators in the same way as if he were a Commissioner appointed by the Court ; and
- (c) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court ; and
- (d) to correct in any award any clerical mistake or error arising from any accidental slip or omission.

13. Any party to a submission may take out process of the Court for the attendance of witnesses, but no person shall be compelled under any such process to produce any document which he could not be compelled to produce on the trial of any action.

14. The time for making an award may from time to time be enlarged by order of the Court or a Judge, whether the time for making the award has expired or not.

15. (1) In all cases of reference to arbitration the Court or a Judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(2) When a matter is remitted as aforesaid the arbitrators or umpire shall, unless the order of remittal otherwise directs, make their award within three months after the date of such order.

16. (1) Where an arbitrator or umpire has misconducted himself the Court may remove him.

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside, and may award costs against any such arbitrator or umpire personally.

17. An award which has been made a rule of Court may be enforced in the same manner as a judgment or order to the same effect.

18. Where the submission does not provide in what place the arbitration shall be held the arbitrators or umpire may from time to time decide upon such place as may be reasonably accessible to the parties and convenient for the purposes of the reference.

REFERENCES UNDER ORDER OF COURT.

19. (1) Subject to Rules of Court, the Court or Judge may refer any question arising in any cause or matter (other than a criminal proceeding) for enquiry or report to any official or special referee or officer of the Court.

(2) The report of an official or special referee or officer of the Court may be adopted wholly or partially by the Court or a Judge, and with or without such amendments as may to the Court or Judge seem meet, and if so adopted may be enforced as a judgment or order to the same effect, or the Court or a Judge may remit the report for further consideration, or make such other order thereon as may be just.

20. In any cause or matter (other than a criminal proceeding) :

- (a) if all the parties interested who are not under disability consent; or
- (b) if the cause or matter requires any prolonged examination of documents, or any scientific, technical or local investigation which cannot, in the opinion of

a Court or Judge, conveniently be conducted by the Court through its ordinary officers; or

- (c) if the question in dispute consists wholly or in part of matters of account;

the Court or Judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before an official or special referee or arbitrator agreed on by the parties, or, failing agreement, before any official referee or officer of the Court appointed by the Court.

21. (1) In all cases of reference to an officer of the Court, or to an official or special referee or arbitrator under an order of Court or a Judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the Court, and shall have such authority and shall conduct the reference in such manner as may be prescribed by Rules of Court and subject thereto as the Court or a Judge may direct.

(2) The report or award of any official or special referee or arbitrator or officer of the Court on any such reference shall, unless set aside by the Court or a Judge, be equivalent to a finding of fact by the Court.

(3) The remuneration to be paid to any official or special referee or arbitrator or officer of the Court to whom any matter is referred by order of the Court or a Judge shall be determined by the Court or a Judge or by Rules of Court.

22. The report or award of any officer of the Court or official or special referee or arbitrator may, upon motion by any party after due notice to the other parties, be made a judgment or order of the Court.

23. The Court or a Judge shall, as to references under order of the Court or a Judge, have all the powers which are by this Ordinance conferred on the Court or a Judge as to references by consent out of Court.

GENERAL.

24. The issue of a subpœna or summons on a witness to compel his attendance and the production of things or documents before an arbitrator, arbitrators, umpire, officer of the Court, and official or special referee, as the case may be, may be procured in

the same way and subject to the same conditions as if the matter were an action pending in the Court;

- (a) by any party to a submission or any arbitrator, arbitrators, or umpire thereunder;
- (b) by the parties to any reference under any order of Court; or
- (c) by any officer of the Court, official or special referee hearing any reference under order of Court;

provided always:

- (1) that no person shall be compelled on such subpoena to produce any document or thing, the production of which would not be compellable on trial of an action;
- (2) that the Clerk of the Court of any Resident Magistrate may issue such subpoena in the name and on behalf of the Registrar of the Court upon payment of the same fees as are chargeable for the issue of a subpoena in the Magistrate's Court.

25. The Court or a Judge may order the process of the Court to issue to compel the attendance before a special or official referee or officer of the Court, or before an arbitrator or umpire, of a witness wherever he may be within the jurisdiction of the Court, or may order any prisoner to be brought up for examination before such officer, referee, arbitrator or umpire.

26. Any such officer, referee, arbitrator or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a Judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

27. Any order made under this Ordinance may be made on such terms, as to costs or otherwise, as the authority making the order thinks just.

28. Any person who wilfully or corruptly gives false evidence before any such officer, referee, arbitrator or umpire shall be guilty

of perjury in the same way as if the evidence had been given in open Court, and may be dealt with, prosecuted and punished accordingly.

29. This Ordinance shall not affect any arbitration pending at the date of the taking effect of this Ordinance, but shall apply to any arbitration commenced after such date of this Ordinance under any agreement or order made before such date.

30. Nothing in this Ordinance shall apply to any arbitration under the Expropriation of Lands and Arbitration Clauses Proclamation, 1902, unless all the parties to the arbitration shall otherwise agree in writing, and then the said Proclamation and this Ordinance shall be read together.

31. This Ordinance may be cited as the Arbitration Ordinance, 1904.

SCHEDULE.

Provisions to be Implied in Submission.

(a) If no other mode of reference is provided, the reference shall be to a single arbitrator.

(b) If the reference is to two arbitrators, then for the decision of any question they must both agree, but if to more than two, then the decision of the majority of arbitrators shall determine all questions.

(c) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

(d) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission if the latter be the earlier date, or on or before any later day to which the arbitrators by any writing signed by them may from time to time enlarge the time for making the award, provided that such further period shall not exceed four months.

(e) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission or to the umpire a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(f) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award, provided that such further time shall not exceed three months.

(g) The parties to the reference and all persons claiming through them respectively shall, subject to any legal objection, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in dispute, and shall subject as aforesaid produce before the arbitrators or umpire all books, deeds, accounts, papers, writings and documents within their possession or power respectively which may be required or called for, and to do all other things which during the proceedings on the reference the arbitrators or umpire may require.

(h) The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

(i) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

(j) The cost of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs, or any part thereof, shall be paid, and may tax or settle the amount of costs to be so paid, or any part thereof, and may award costs to be so paid as between solicitor and client; provided always, that if no direction be given as to the scale on which such costs are to be taxed they shall be taxed on the tariff allowed in Magistrates' Courts from time to time if the award is such as a Magistrate might have pronounced as a judgment in his Court, but otherwise such costs shall be taxed on the tariff in force from time to time in the Supreme Court.

(k) The oral evidence of witnesses shall be recorded by the arbitrator or arbitrators or umpire before whom it may be given in such manner as may be by him or them from time to time directed, if not recorded by the arbitrator, arbitrators, or umpire themselves.

(l) The umpire shall be at liberty to act upon the evidence recorded before the arbitrators, and to make his award without hearing any witnesses or receiving any fresh evidence; provided nevertheless that he shall be entitled, if he so think fit, to re-hear the witnesses or any of them or to call for further evidence.

(m) The umpire shall be at liberty to sit together with the arbitrators, and to hear the evidence given from time to time, and shall be entitled then and there to decide any interlocutory matter upon which the arbitrators disagree; provided however that the umpire shall not, unless called upon to give an award or unless the parties have requested him so to sit, be entitled to demand remuneration from the parties in respect of his attendance on the reference with the arbitrators.

(n) If the arbitrators, where there is more than one, or a majority of them, cannot agree as to any matter of procedure or any interlocutory question, they may refer such matter or question forthwith to the umpire for decision, and he shall give his decision thereon forthwith.

(o) The arbitrator, arbitrators, or umpire shall be at liberty to proceed *ex parte* in case any party after reasonable notice shall at any time neglect or refuse to attend on the reference without having shown previously to them what they may consider good and sufficient cause for omitting to attend.

(p) If any party to the arbitration die, the arbitration shall be stayed, subject to any order that the Court may make, until the appointment of an executor or other proper representative of such deceased party, and the time for making an award shall be extended for the same period as may elapse between the death of the party and the appointment of an executor or other proper representative, and such executor or other proper representative shall, when called upon by the other party or parties to the submission to proceed with the arbitration, be subject to the same rules, provisions and conditions as the deceased party.

PART 2.—CORPORATIONS.

A.—COMPANY LAW.

LAW No. 5, 1874.

To Limit the Liability of Members of certain Companies.

1. The term Company in this Law shall mean every association whereof the capital is divided, or agreed to be divided, into shares, so as to be transferable without the express consent of all the shareholders, and which at the same time at its formation or by subsequent admission shall consist of more than twenty-five members; provided, however, that nothing contained in this Law shall apply to any banking company.

2. Any company may obtain a certificate of registration with limited liability from the Registrar of Deeds of the Republic, upon complying with the conditions following, that is to say:—

- (1) The directors or provisional directors shall, in their application to the Registrar of Deeds for such registration, state that a company is to be formed with limited liability. (See Law 1, 1891, § 2, following.)
- (2) The word “ Limited ” shall be the last word of the name of the company.
- (3) The articles of association shall contain a statement to the effect that the company is formed with limited liability.
- (4) The articles of association shall be signed by not less than twenty-five shareholders, who shall hold jointly not less than three-fourths of the nominal capital of the company in shares. Each shareholder shall have paid up not less than one-tenth on his shares.

- (5) A declaration by two or more directors or provisional directors, made before a Justice of the Peace, stating that the above-mentioned tenth portion is actually paid up, shall be deposited with the Registrar of Deeds, together with a certified copy of the articles of association (with particulars of the names, places of abode, and the number of shares held by each of the shareholders). The payment of the above-mentioned tenth portion shall be acknowledged in, or by endorsement on, the articles of association; upon above conditions being complied with, the Registrar of Deeds shall grant to such company a certificate of registration with limited liability.

3. Any company, except as aforesaid, already existing, may obtain a certificate of registration with limited liability in the following manner, and subject to the following conditions:—The directors of such company may make such alteration in the name, the amount of paid-up capital, and in the articles of association of the company generally, as may be necessary to enable it to comply with the conditions hereinbefore mentioned. This shall be effected with the consent of not less than three-fourths in number and value of the shareholders of the company who are present personally or represented by proxy (where such is allowed by the articles of association) at a general meeting convened for that purpose by a previous notice of not less than six weeks in the *Staatscourant*. Upon compliance with these conditions the Registrar of Deeds shall grant to such company under its new name a certificate of registration with limited liability; and thereupon all privileges and obligations of companies with limited liability, their shareholders, directors and officers shall attach to the company named in such certificate, its shareholders, directors and officers. (The words "already existing" mean existing when this Law was passed in 1874.)

4. Every company that has obtained a certificate of registration with limited liability shall paint, and shall keep painted, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraved in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements and other official publications of such company, and in all bills of exchange, promissory notes, cheques, money orders, way bills, price lists, receipts, letters and other writings used in the transactions of the company.

5. If such company do not paint and keep affixed its name in the manner aforesaid, each of the directors thereof shall be liable to a penalty not exceeding £5 sterling for this omission, and for every day as long as the omission lasts; and if any director or subordinate official of the company, or any other person on its behalf, use any seal, purporting to be a seal of the company, whereon its name is not so engraved as aforesaid, or issues, or causes to be issued, any notice, advertisement, or other official publication of such company, or circulates, or causes to be circulated, any bill of exchange, promissory note, cheque, money order, way bill, price list, receipt, letter or other writing used in the transaction of the business of the company, wherein its name is not mentioned in the manner aforesaid, he shall be liable to a penalty of £20 sterling, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque or money order for the amount thereof, unless the same shall be duly paid by the company.

6. No increase in the nominal capital of any company that has obtained a certificate of registration with limited liability shall be advertised or otherwise treated as part of the capital of such company before such increase has been registered with the Registrar of Deeds; no such registration shall be made unless a deed has been produced to the Registrar, signed by shareholders holding shares to the amount in the aggregate of at least three-fourths of the proposed increased capital of the company; nor unless it is proved to the Registrar of Deeds, by such acknowledgment and declaration as hereinbefore mentioned, that upon each of such shares there has been paid up, by the holder thereof, an amount of not less than 10 per cent.

If any such increase of capital as aforesaid be advertised or otherwise treated as part of the capital of the company before the same has been so registered, every director of such company shall incur a penalty of £50 sterling; the payment of the above-mentioned percentage shall be acknowledged in or endorsed on the deed so produced; and the fact of the same having been *bonâ fide* so paid shall be verified by a sworn declaration of the directors, or any two of them, made before a Justice of the Peace.

7. Within one month after the date of any new or supplementary articles of association, which may be issued at any time or times during the existence of any company which has obtained a certificate of registration with limited liability under this Law, there shall be transmitted by the directors of every such company, to the Registrar of Deeds, a true copy of such new or supplementary

articles of association, attested as such true copy in the manner aforesaid for future reference as aforesaid. Six-monthly returns of transfers of shares shall, for the purpose of being kept, be filed with the Registrar of Deeds.

8. In the months of January and July in every year the directors of every such company which has obtained a certificate of registration with limited liability shall make or cause to be made the following return to the Registrar of Deeds, namely:—A return, according to the schedule hereunto annexed, containing the particulars therein set forth of every transfer of any share in such company, which shall have been made in the share transfer list, or book kept by the said company, and also of the changes in the names of all shareholders of such company, whose name may have been changed by marriage or otherwise since the last preceding six-monthly return, or since the registration of the company, by the Registrar of Deeds, as the case may be. (See also § 3, Law 1, 1891.)

9. If within the time fixed such return as mentioned in Art. 8 of these regulations be not made, every director of such company shall be liable to a fine not exceeding £20 sterling. Provided, however, that if any company which has obtained a certificate as aforesaid shall have its head office or place of business in any part of the Republic other than Pretoria, and the district thereof, then a true copy of the aforesaid return shall, besides being filed with the Registrar of Deeds, be filed with the Landdrost of such district in the manner as aforesaid, and in case such return shall not be so filed in the months aforesaid, every director shall for such neglect be liable to a fine not exceeding £20 sterling.

10. If at any time any party to a transfer of a share makes written request to the directors of any such company to make a return thereof, then forthwith on such request the directors shall make the same accordingly. Provided, however, that the directors may require the party making such request to defray any expense they may be put to in making the return aforesaid.

11. Every person shall be at liberty to inspect the returns, deeds, registers, and indexes kept by the said Registrar of Deeds and the Landdrost, in pursuance of the provisions of this Law, or to demand a copy or extract of any such return or deed, certified by the said Registrar of Deeds, and for such inspection, certified copy or extract there shall be paid such fees as the President, with the advice and consent of the Executive Council, may appoint from

time to time in that behalf, not exceeding one shilling for each such inspection, and ninepence for each page of such copy or extract, and in all Courts of this Republic every such copy or extract, so certified, shall be received in evidence without proof of the signature or of the seal of office affixed thereto.

12. Every company shall, on being registered, or on receiving a certificate of registration with limited liability, pay to the Registrar of Deeds the following sums, viz. :—

(See §§ 33 and 34 of the Stamp Duties Proclamation, No. 12, 1902, following.)

And besides these sums and the fees hereinbefore provided to be paid, there shall be paid by such companies registered as aforesaid, such other fees in respect of any services to be performed by the Registrar of Deeds, under the provisions of this Law, as the President, with the advice and consent of the Executive Council, may from time to time appoint in that behalf.

13. The members of any company which has so obtained a certificate of limited liability in the manner aforesaid, shall, after having received such a certificate, not be liable (any law to the contrary notwithstanding) under any judgment, decree, or order, which shall be obtained against such company, or for any debt or engagement of such company, further, or otherwise, than is hereafter provided.

14. If any execution, or other process in the nature of execution, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any of the shareholders to the extent of the then unpaid portion of their respective shares in the capital of the company; but no shareholder shall be liable to pay in satisfaction of any one or more such levies, or other process, a greater sum than shall be equal to the unpaid portion of his shares. Provided always that no such execution shall issue against any shareholder except upon an order of the Court in which the action, suit, or other proceeding has been brought or instituted; and such Court may order execution to issue accordingly with the reasonable costs of such application and execution to be taxed by the taxing officer of the said Court; and for the purpose of ascertaining the names of the shareholders, and the amount of the sum still payable upon their respective shares, it shall be lawful for any person entitled to any such execution to inspect at all reasonable times the register of shareholders without payment of fee.

15. If any execution, or other process issued in the nature of execution, be proceeded with against the property or effects of any shareholders for the time being, and there cannot be found sufficient whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any former holder or holders of the shares, held by such shareholders for the time being, for such amount as such shareholders for the time being shall have failed to pay, in satisfaction of the execution, or other process in the nature of execution, issued :—

- (a) Provided, however, that nothing herein contained shall be taken to render any such former holder or holders of shares aforesaid liable for any larger amount than he or they would have been liable for under the provisions of this Law, if he or they had been at the time of the issuing of such execution, or other process in the nature of execution, the holder or holders of such shares.
- (b) Provided also, that in case of execution against any former shareholder, such shareholder shall have been a shareholder at the time when the contract or engagement in respect of which such judgment, decree, or other order may have been obtained was entered into, or became a shareholder during the time such contract or engagement was unexecuted or unsatisfied, or was a shareholder at the time of the judgment, decree, or order being obtained.
- (c) Provided, further, that in no case shall execution be issued on such judgment, decree or order, against the person, property or effects of any such former shareholder, after the expiration of two years after the return of the transfer of the shares of the person or persons sought to be charged shall have been made to the Registrar of Deeds, as provided in Art. 7 and 8 of this Law. (See also § 4 of Law 1, 1891.)

16. If the directors of any such company shall declare and pay out any profits or dividend when they know the company to be insolvent, or any dividend (profits) the payment of which would to their knowledge render it insolvent, they shall be jointly and severally liable for all the then existing debts of the company, as

also for all that shall be contracted thereafter during the time they respectively continue in office: provided that the amount for which they shall be liable shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend, or shall object thereto and shall file their objection, in writing, with the secretary of the company, they shall be exempted or excluded from the said liability.

17. Payments shall be made only in cash.

18. All Laws and regulations inconsistent with or repugnant to the provisions of this Law are hereby repealed.

19. This Law may be cited for all purposes as "The Limited Liability Companies Law."

20. This Law shall take effect in accordance with Article 69 of the Grondwet (prescribing publication within two months of passing by the Volksraad).

SCHEDULE.—(See Section 8.)

Return made in accordance with "The Limited Liability Companies Law," No. 5, 1874.

TRANSFER OF SHARES.

Name of the Company.	Business or purpose.	Place (or principal place, if more than one) of business.	Name and place of abode of person by whom transfer is made.	Name and place of abode of person to whom transfer is made.	Distinctive number of the shares transferred.	Date of transfer.

Shareholders whose names have become changed by marriage or otherwise :—

Former name.	Former place of abode.	Present place of abode.	Specific return of the number of shares.

Date.....

Signature.....

LAW No. 6, 1874.

For the Incorporation of Companies.

Enacted by Volksraad Resolution, Art. 269, dated 18th November, 1874.

Whereas it has often happened, and is likely to happen again, that applications are made to the Executive Council by persons who have formed companies for the purpose of prospecting for minerals, and to work the same, as well as for other purposes, for the incorporation of such companies, subject to the Laws of this Republic :—

Be it hereby enacted by the Volksraad, that it shall and may be lawful for the Executive Council to grant Letters of Incorporation to any company, on payment of a sum of £25 sterling, and subject to such other stipulations and conditions as may appear expedient to the said Executive Council. (See Law 22, 1894, § 21, below.)

By VOLKSRAAD RESOLUTION, Art. 58, dated 10th May, 1890.

The following resolutions of the Executive Council obtained the force of law in the South African Republic, viz. :—

1. Executive Council Resolution, Art. 786, dated 18th December, 1889.

The Executive Council resolves :—

That no registration of inland companies shall take place when the articles of association have reference to the erection or institution of mints, railways, tramways, telegraph lines, etc., and further that no registration of any inland company shall take place otherwise than subject to this special condition, that there shall be no carrying into effect of such of the articles of association as may appear to be opposed to the interests of the country. This resolution shall not derogate from any of the other provisions of Law No. 5 of 1874.

2. Executive Council Resolution No. 746, dated 29th November, 1889.

Resolved that :—

As and from this date no foreign company shall be registered in this Republic unless it be incorporated in manner as provided in Law No. 6 of 1874.

LAW No. 22, 1894.

By § 21 of this Statute, Law No. 6, 1874, is amended as follows :—

21. In the preamble of Law No. 6, 1874, the words “Registrar of Companies” shall be substituted for the words “Executive Council,” and in the body of the Law the words “Registrar of Companies in consultation with the State Attorney and the Registrar of Deeds” shall be substituted for the words “Executive Council.”

LAW No. 1, 1891.

Being a Supplement to Law No. 5 of 1874, Limiting the Liability of Members of certain Companies.

Whereas it is desirable that Law No. 5 of 1874 should be supplemented :

It is hereby enacted and provided as follows :—

1. The following new articles shall be inserted after Art. 1 of the said Law, to wit :

1A. Where, after the passing of this amended Law, the public shall be requested by means of any prospectus or notice to subscribe for shares in, or debentures or securities of, any company, every person who is a director of the company at the time of the issue of such prospectus or notice, and every person who, having authorised his nomination as such, is named in the prospectus or notice as a director of the company, or as having consented to become a director of the company, whether immediately or after the lapse of a certain time, and every promoter of the company, and every person who has authorised the issue of the prospectus or notice, and every person who has made any untrue report or memorandum which is attached to such prospectus or notice, shall be answerable to all persons who, on the faith of the statements contained in such a prospectus or notice, may have obtained any shares, debentures, or securities, and shall be liable for any damage or loss which such persons may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum attached thereto, endorsed thereon, or by way of reference forming part thereof, or issued therewith, unless it can be shown :—

- (a) With reference to every such untrue statement, not purporting to have been made upon the authority of an expert or upon that of an official public document or statement, that, after a reasonable and proper enquiry, he had reasonable grounds to believe, and until the time of the allotting of the shares, debentures or securities, as the case may be, verily believed that the statement was true, and
- (b) With reference to every such untrue statement, purporting to be a statement made by or purporting to be contained in what purports to be a copy of or extract from a report or estimate of an engineer, appraiser, accountant or other expert, that such statement actually represents the statements made by such engineer, appraiser, accountant or other expert, or that it was a true and faithful copy of or extract from such report or estimate, provided always that notwithstanding that such untrue statement may correctly reproduce the statement made by such engineer, appraiser, accountant or other expert, or that it may be a true and faithful copy of or extract from the report or estimate, such director, or person named as such in the prospectus as aforesaid, promoter or other person or persons who may

have authorised the issue of such prospectus or notice aforesaid, shall be liable to make compensation as aforesaid, if it can be shown that he had no reasonable grounds to believe that the persons making such statements, reports, or giving such estimate were competent to make or give the same, and

- (c) With reference to every such untrue representation, purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from an official public document, that it is a true and faithful reproduction of such statement or copy of or extract from such document, or unless it can be shown that, having consented to become a director of the company, he withdrew his consent prior to the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that upon becoming cognisant of such issue he immediately thereafter gave reasonable public notice that it had been issued without his knowledge and consent, or that after the issue of such a prospectus or notice and before the allotment thereunder he, becoming cognisant of any untrue statement therein contained, withdrew his consent and gave reasonable public notice of such withdrawal and the reasons therefor.

1b. A person shall be deemed and taken to be a promoter in terms of this section who was a party to the drawing of the prospectus or notice, or any portion thereof containing such untrue statement, provided always that this definition shall not be held to include the case of a person who acted in his professional capacity for other persons engaged in effecting the flotation of the company.

1c. Where any company already existed at the time of the passing of this amendment of the Law, which company shall have issued shares or stock and shall be desirous of raising further capital by subscription for shares or stock and to that end shall issue a prospectus or notice, no director of such company shall be responsible with reference to any statement therein contained, unless he shall have authorised or approved of the issue of such prospectus or notice, or have ratified the same.

1D. The word "expert" shall include any person whose profession lends authority to a statement made by him.

1E. Where any prospectus or notice as aforesaid shall set out the name of any person as a director of the company, or as one who has agreed to become a director thereof, and if such person has not thereto consented or shall withdraw before the issue of such a prospectus or notice, and has not consented to or authorised the issue thereof, the directors of the company, with the exception of those without whose knowledge or consent the prospectus or notice was issued, and any other person who has authorised such issue shall be answerable and held liable to make good to the person so named as director of the company, or as having agreed to become a director as aforesaid, all damage, costs, and losses for which he may be held or be liable, by reason of his name being placed in the prospectus or notice, or in respect of the defence of any action or lawsuit brought against him concerning the same.

1F. Any person who is a director, or nominated to be a director, or who, having agreed to become a director or having consented to the issue of a prospectus or notice, shall have become responsible for any payment under this amended Law, shall be entitled as in the case of contracts to recover his contribution from any other person who, if he had been separately sued, would have been responsible for the same payment.

2. The words "and a prospectus (if there be one) as to how and what the company is floated on" shall be added to Art. 2, par. 1, after the word "liability." [This does not make sense.—M. N.]

3. To Art. 8 shall be added the following:—"A statement mentioning in full the names of the directors, trustees and secretary who on the date of filing thereof are in office or service of the company, and who shall be deemed to be in such service or office until the names of the newly-elected directors, trustees or secretaries are properly registered at the Registration Office.

The directors of a company shall further be obliged forthwith upon any company entering into liquidation, or upon its being dissolved or amalgamated with others, and at latest within three months thereof, to give notice thereof to the Registrar of Companies.

For contravention of this Article (Art. 8) the directors and each of them separately shall be liable to a fine of from £15 to

£100 sterling (not exceeding £100), or to imprisonment for a term not exceeding six months, according to the nature of the case, and any Court of this Republic shall have jurisdiction therein."

4. At the end of Art. 15 c, under par. (d), the following shall be added:—

"Any company registered in this Republic or incorporated under some definite name may be cited by such name in any Court of Law, notwithstanding any stipulations to the contrary in the articles of association of such company or other provisions therein contained, with this proviso, that all summonses or orders of Court shall be properly served on the person representing the company, or at the registered office of the company or in such other manner as the Court may direct."

5. In any articles of Law 5 of 1874 where the words "Registrar of Deeds" appear, there shall be read, in lieu of these words, the following: "Registrar of Companies and Patents at the office of the Registrar of Deeds."

6. The amendment of this Law shall come into operation three months after publication in the *Staatscourant*.

SHARES TO BEARER.

Under Authority granted by Volksraad Besluit, Art. 1331, dated 29th August, 1892, the following Resolution 8908-92 was taken by the Executive Council and published in the "Staatscourant," 1st December, 1892.

The Executive Council, in pursuance of Resolution of the First Volksraad, Art. 1331, dated 29th August, 1892, resolves:—

That upon a company having been registered with limited liability, under Law No. 5 of 1874, such company shall be allowed to issue fully paid-up share warrants payable to bearer, which may at any time be exchanged for share certificates, in manner provided in the articles of association originally or as modified by special resolution of the company.

[By Resolution of the Second Volksraad, dated 17th May, 1894, the provisions of above Executive Council's Resolution were again confirmed and extended, and made to apply to companies incorporated and registered under Law No. 6 of 1874, as well as those registered under Law No. 5 of 1874.]

RESOLUTION OF SECOND VOLKSRAAD, 16th August, 1893, Art. 856.

Taken as an addendum to Clause 17 of Law 5, 1874; noted and accepted by First Volksraad, Art. 1219, dated 29th August, 1893:—

If any company, with limited liability, has already issued or may at any time hereafter issue shares of such company as fully paid up, in exchange for or in consideration of any property, rights or privileges acquired by such company to the advantage and advancement of its objects of association, or in exchange for or in consideration of services rendered to or for the benefit of such company, and to the advancement of its purposes or otherwise, then all such shares shall be deemed and taken to be actually fully paid up, and no responsibility or liability shall arise or be deduced therefrom as against the person in whose favour such shares are issued, or may be issued, or as against the subsequent holders thereof, other than would have arisen had such shares been actually fully paid up in cash.

SECOND VOLKSRAAD RESOLUTION, Art. 98, dated 17th May, 1894; noted and accepted by First Volksraad Resolution, 30th May, 1894, Art. 275.

Resolved:—

That the provisions of Executive Council Resolution R. 8,908/92, passed in pursuance of First Volksraad Resolution, Art. 1331, dated 29th August, 1892, shall also extend and be applicable to companies incorporated and registered under Law No. 6, 1874.

LAW No. 1, 1894.

Liquidation of Companies.

Whereas the desirability has appeared of making provision for the liquidation of companies with shares in cases where it is in the public interest to liquidate such companies, now, therefore, it is hereby enacted and provided as follows:—

1. The word “company” in this Law shall signify every association whereof the capital is divided, or is agreed to be divided, into shares, so that such shares can be transferred without

the express consent of all the shareholders, and which, moreover, at its formation, or by subsequent admission, shall consist of not less than twenty-five members.

The word "contributory" in this Law shall signify every person who is liable for shares which have not been fully paid up.

2. Any company may be placed in liquidation by order of the High Court, Circuit Court, or one of the Judges in Chambers:—

- (a) Upon it being shown that untrue returns, as set out in Art. 1A to 1F of Law No. 1 of 1891, have been made.
- (b) If the company has taken a special resolution to enter into liquidation.
- (c) If the company has not commenced its operations within a year after its incorporation, or has suspended its operations for a whole year.
- (d) If the number of members has diminished to less than twenty-five.
- (e) If 75 per cent. of the actual paid-up capital has been lost, or has become useless for the business of the company.
- (f) If the company cannot pay its debts.
- (g) If the High Court is of opinion that it is advisable, right, and just that the company shall be liquidated.

3. Such an order may be granted on an application to Court in the form of a petition, which can be made by the company, if incorporated in this Republic or if not incorporated in this Republic, by any official of the company, qualified and authorised to appear in the name and on behalf of the company, or by one or more creditors or debenture-holders of the company, or by one or more shareholders or contributories, and every order for liquidation granted on such a petition shall, in effect, be of the same force, without taking into consideration on whose petition the order was made.

4. The liquidation shall take effect from the day on which the order is granted.

On the hearing of any petition for liquidation, the Court may refuse the same, with or without costs, or may postpone the hearing, or may make such interlocutory order or cause such investigation and enquiry to be instituted as the Court may deem just and advisable, or may make the order provisional or final.

The Court may, before or after the granting of such order, appoint provisional liquidators, and after the order the Court may appoint one or more official liquidators to carry out the liquidation.

Upon making such appointment, the Court or Judge in Chambers may determine what security shall be given by such official liquidator or liquidators, for the proper performance of his or their duties.

5. The liquidators may resign their office upon showing sufficient reason to the Court, and the Court may cancel the appointment on sufficient grounds, and appoint one or more liquidators in their stead.

The liquidators may, with leave of the Court, exercise the following powers, viz. :—

- (a) Compromise any claim made by or against the company.
- (b) Institute, defend or continue any action, civil or criminal, in the name and on behalf of the company.
- (c) Continue the business of the company in so far as this may be in the interests and for the benefit of the liquidation of the company.
- (d) Sell the property of the company, and give transfer where necessary.
- (e) Transact all business and sign all documents in the name of the company, make, accept, and endorse bills of exchange and promissory notes as a valid charge upon the company, and borrow money upon security of its assets.
- (f) File any claim in the insolvent estate of a contributory to the company, and receive the dividend.
- (g) Take steps in their official capacity to secure the proper administration of the estate of a deceased contributory, and take any further steps to recover moneys due by a contributory or his estate to the company.
- (h) Take all other steps and transact all other matters which may be considered necessary for the liquidation of the company.

The Court may, on cause shown, by means of any order provide that any of the above-mentioned powers shall be exercised by the official liquidator without further leave or intervention of the Court, and may, in the order appointing any provisional liquidator, define his powers.

6. As soon as possible after an order is granted placing a company under liquidation the Court shall, at the instance of the liquidators, settle a list of contributories, and shall have power to amend the register of shareholders in all cases where such shall appear necessary, and shall order that all the assets of the company shall be collected and used for the settlement of the debts of the company.

Such contributories shall be ranked in two lists, marked A and B. On the said list A shall be placed all contributories who are such in their own right, and on the said list B shall be placed all contributories who are such as representatives of, or liable for, the debts of others.

7. At any time after the order, the liquidators may, after obtaining leave of the Court, make calls, and the Court may order that the same shall be paid by each and every contributory who is placed on the aforementioned lists in so far as he is responsible, to the amount of a sum which the Court may deem necessary in order to settle the debts of the company and to pay the costs of liquidation, and in making such calls the Court shall take into consideration the mutual rights of the said parties and also the possibility and probability that some of these parties may not be able to make the payments either wholly or in part.

The Court may further grant an order allowing a set-off in cases where a company owes any moneys to a contributory on any separate contract or transaction with the company, but not if the moneys due are profits or dividends accruing to such contributory as a shareholder.

8. The Court may fix a day or days on or within which the creditors of the company must send in their claims, or forfeit the privilege of partaking in any distribution that may be made before the filing of such claims.

The Court shall adjust and determine the rights of contributories.

9. Upon any company being placed in liquidation in terms of this Law, all compromises affecting, and dealings with, the property and effects of the company, and every transfer of shares or alteration in the position of contributories, as also all attachments, sequestrations, arrests and executions made or taken out against the estate of the company after the granting of the order for liquidation, shall be null and void, unless the Court shall order otherwise.

10. Every alienation, transfer, cession, delivery, mortgage or pledge of any property and effects, movable or immovable, personal or real, and every payment which, if made by a private person, in case of his insolvency would be an undue preference under the Insolvency Law No. 21 of 1880, shall when made by or against a company, if it is being liquidated under this Law, be considered to be an undue preference, and shall accordingly be null and void, and for the purposes of this Article the presentation of the petition for the liquidation of a company, and the order thereon, shall be considered as equivalent to the provisional order for the compulsory sequestration of the estate of a private person under Art. 5, Law No. 21 of 1880 (now § 7, Law 13, 1895, p. 3 of this work).

11. Upon the liquidation of a company being entirely completed the Court shall grant an order dissolving the company as and from the date of such order and thereupon the company shall be dissolved. Such order shall be published within twelve days after the granting thereof in the *Staatscourant* and in any newspaper that the Court shall appoint.

12. The Master of the High Court of the South African Republic shall supervise the due liquidation of companies.

13. The liquidators shall be bound to allow the Master of the High Court inspection of all original documents connected with the liquidation of companies, and upon the termination of the liquidation they shall deposit all documents relating to the liquidation at the office of the aforesaid official.

14. And it is enacted that the liquidators of any company within the meaning of this Law, as soon as possible and not later than six months after their appointment, unless upon request to the High Court on sufficient grounds to the satisfaction of the said Court further time is given for that purpose, shall be obliged to frame and lay before the Master of the High Court an accurate statement of accounts and a balance sheet of the estate of such company, setting out what the proceeds of all sales and debts then collected

are, and giving an inventory of all property and effects still unsold; and shall likewise specify all amounts due by the said estate, and shall frame a plan for the distribution of the effects of the said estate, specifying, firstly, such creditors as according to law are preferent in the order of their legal preference, and, secondly, the concurrent creditors and the balance that remains over for division among them.

15. The liquidators shall be bound to file a proper account and plan of distribution at the Master's office, and to publish the same in the same way as defined by Art. 109 of Law No. 21, 1880 (now § 114, Law 13, 1895, p. 52 of this work).

16. With regard to objections against and confirmation of such documents and plans, the same rules shall be followed as are laid down in Law 21, 1880, Articles 110, 111, 112 (now §§ 117-119, Law 13, 1895, p. 54 of this work).

17. Further, all regulations laid down in Law 21, 1880, with regard to the distribution of the estate shall be followed (see §§ 120-131, Law 13, 1895, p. 55 of this work).

18. The charges and stamp duties fixed by Law No. 5, 1881, shall be applicable to the liquidation of companies within the meaning of this Law.

19. The Judges of the High Court may when necessary, subject to the approval of the Government, make such rules and regulations as they may consider advisable and expedient with regard to the procedure according to which a company shall be liquidated.

Such rules and regulations shall have force of law after publication in the *Staatscourant*.

20. This Law shall come into operation immediately after publication in the *Staatscourant*.

ORDINANCE No. 30 of 1904.

To Amend the Limited Liability Companies' Law (Law No. 5 of 1874).

1. In this Ordinance, unless inconsistent with the context—

“company” shall mean a company registered in terms of Law No. 5 of 1874;

“Court” shall mean the Supreme Court of the Transvaal or the Witwatersrand High Court as the case may be;

“Registrar” shall mean the Registrar or Assistant Registrar of Companies at Pretoria;

“special resolution” shall mean a resolution of the members of a company which has been passed in manner required by § 15 of this Ordinance.

2. It shall be lawful for any company which is desirous of effecting by means of new or supplementary articles of association:—

- (a) an alteration of the objects for which the company was originally formed; or
- (b) a consolidation, sub-division or conversion of its registered capital; or
- (c) a reduction of its registered capital;

to effect each or any of such purposes in the manner hereinafter provided.

(A) ALTERATION OF OBJECTS.

3. Any company may, subject to the provisions hereinafter mentioned, by special resolution alter the provisions of its articles or association with respect to the objects of the company so far as may be required for the purposes hereinafter specified, but in no case shall any such alteration take effect until confirmed on petition by the Court.

4. Before confirming any such alteration the Court must be satisfied:—

- (a) that sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and
- (b) that with respect to every creditor who, in the opinion of the Court, is entitled to object and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined or has been secured to the satisfaction of the Court;

provided that the Court may, in the case of any person or class of persons, for special reasons dispense with the notice required by this section.

5. An order confirming any such alteration may be made in such terms and subject to such conditions as to the Court seem fit, and the Court may make such orders as to costs as it deems proper.

6. The Court may confirm, either wholly or in part, any such alteration as aforesaid if it appears that the alteration is required in order to enable the company—

- (a) to carry on its business more economically or more efficiently; or
- (b) to attain its main purpose by new or improved means;
or
- (c) to enlarge or change the local area of its operations; or
- (d) to carry on some business or businesses which, under existing circumstances, may conveniently or advantageously be combined with the business of the company; or
- (e) to restrict or abandon any of the objects specified in the articles of association.

7. The Court shall, in exercising its discretion under the above §§ 3 to 5 (inclusive), have regard to the rights and interests of the members of the company or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings, in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interest of dissentient members; the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect; provided always that it shall not be lawful to expend any part of the capital of the company in any such purpose.

8. Where a company has altered the provisions of its articles of association with respect to the objects of the company and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration, together with a true copy of the

new or supplementary articles of association embodying such alteration, shall be delivered by the company to the Registrar within fifteen days from the date of the order, and the Registrar shall register the same and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Ordinance with respect to such alteration and the confirmation thereof have been complied with, and thenceforth the articles of association so altered shall be the articles of association of the company.

9. If a company makes default in delivering to the Registrar any document required by the last preceding section to be delivered to him the company shall be liable to a penalty not exceeding £10 for every day during which it is in default.

(B) CONSOLIDATION, SUB-DIVISION OR CONVERSION OF CAPITAL.

10. Any company (if and as authorised so to do by its articles of association) may so far modify the conditions contained in its articles of association as to—

- (a) consolidate and divide its capital or any part thereof into shares of larger amount than its existing shares, or sub-divide its capital or any part thereof into shares of smaller amount than its existing shares; provided that in any consolidation or sub-division respectively of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of increased or reduced amount respectively shall be the same as it was in the case of the existing share or shares from which the share of increased or reduced amount respectively is derived; or
- (b) convert its paid-up shares into stock; or
- (c) re-convert any such stock into paid-up shares of any denomination.

11. Every copy of the articles of association issued after any consolidation, conversion, re-conversion or sub-division of the capital, shares or stock of the company under the last preceding section as the case may be shall have taken place shall show any such consolidation, conversion, re-conversion or sub-division as the

case may be, and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding £1 for each copy in respect of which such default is made; and any director or officer of the company who knowingly or wilfully authorises or permits such default shall incur the like penalty.

(c) REDUCTION OF CAPITAL.

12. Any company may by special resolution so far modify the conditions contained in its articles of association if authorised so to do by its articles of association as to reduce its capital, including therein paid-up capital, in such manner as the company may think fit, provided always that where the reduction of the capital of a company involves either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital no resolution of the company having such effect shall come into operation until an Order of the Court is registered by the Registrar, as is hereinafter mentioned.

13. Every copy of the articles of association of a company issued after the passing of any special resolution for the reduction of the capital of the company which does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital shall be in accordance with such resolution, and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding £1 for each copy in respect of which such default is made, and every director and officer of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

14. Where the reduction of the capital of a company involves either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital the following provisions shall apply :—

- (a) a company which has passed a special resolution for reducing its capital having such effect as afore-said may apply to the Court by petition for an order confirming the reduction, and on the hearing of the petition the Court, if satisfied that with respect to every creditor of the company who, under the pro-

visions of this Ordinance, is entitled to object to the reduction, either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit ;

- (b) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the liquidation of the company, would be admissible in proof against the company shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object ;
- (c) the Court shall settle a list of all creditors entitled to object under the last preceding sub-section, and for that purpose shall ascertain, as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company, who are not entered on the list, are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction ;
- (d) where a creditor whose name is entered on the list of creditors and whose debt or claim is not discharged or determined does not consent to the proposed reduction, the Court may, if it thinks fit, dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the Court may direct a sum of such amount as is hereinafter mentioned : that is to say—
 - (1) if the full amount of the debt or claim of the creditor is admitted by the company, or though not admitted, is such as the company is willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated ;
 - (2) if the full amount of the debt or claim of the creditor is not admitted by the company and is not such as the company is willing to set apart and appropriate,

or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, enquire into and adjudicate upon the validity of such debt or claim and the amount for which the company may be liable in respect thereof in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such enquiry and adjudication shall be set apart and appropriated.

- (e) (1) the Registrar, upon the production to him of an order of the Court confirming the reduction of the capital of a company and the delivery to him of a copy of the order and of a minute (approved by the Court) showing with respect to the capital of the company as altered by the order the amount of such capital, the number of shares into which it is to be divided, the amount of each share, and the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect;
- (2) notice of such registration shall be published in such manner as the Court may direct;
- (3) the Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of the Ordinance with respect to the reduction of capital have been complied with, and that the capital of the company is such as stated in the minute;
- (f) the minute, when registered, shall be deemed to be a true copy of new or supplementary articles of association within the meaning of § 7 of Law No. 5 of 1874, and shall be deemed to be substituted for the corresponding part of the articles of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the articles of association; and, subject as in this Ordinance mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contri-

bution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute;

- (g) if any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company is in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the company is unable to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be liquidated on the day prior to such registration; and on the company being liquidated the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a liquidation; but the provisions of this section shall not affect the rights of the contributories of the company among themselves;
- (h) a minute, when registered, shall be embodied in every copy of the articles of association issued after its registration; and if any company makes default in complying with the provisions of this sub-section it shall incur a penalty not exceeding £1 for each copy in respect of which such default is made, and every director and officer of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty;
- (i) in any case in which the Court thinks fit the Court may require the company to publish, in such manner as the

Court thinks fit, the reasons for the reduction of its capital, or such other information in regard to the reduction of its capital as the Court may think fit with a view to the proper information to the public in relation to such reduction and the causes which led thereto;

- (j) if any director or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any such creditor of the company, or if any director or officer of the company aids or abets in, or is privy to, any such concealment or misrepresentation as aforesaid, every such director or officer shall be liable to a penalty of not exceeding £100.

(D) SPECIAL RESOLUTIONS AND NOTICES.

15. A resolution passed by a company shall be deemed to be special whenever a resolution has been passed by a majority of not less than two-thirds of such members of the company for the time being entitled, according to the articles of association of the company, to vote as may be present in person or by proxy (in cases where, by the articles of association of the company, proxies are allowed) at any general meeting of which notice specifying the intention to propose a special resolution and the general nature thereof has been duly given, and at which meeting members entitled in the aggregate to not less than one-fourth of the total votes of the company shall be present in person or by proxy (in cases where, by the articles of association of the company, proxies are allowed); provided always that, in the event of less than one-fourth of such total votes being present at such meeting in manner aforesaid, the meeting shall stand adjourned to the same day in the following week, and, if such day be a public holiday, then to the next succeeding day on which business is ordinarily transacted, and at such adjourned meeting it shall be competent for the members present in person or by proxy (in cases where, by the articles of association of the company, proxies are allowed) to deal with the business for which the original meeting was convened, and any resolution passed by a majority of not less than two-thirds of such members shall be deemed to be special, notwithstanding that less than one-fourth of such total votes as aforesaid may be present. At any meeting

mentioned in this section, unless a poll is immediately demanded by a member or members holding not less than one-tenth of the amount of capital represented at the meeting, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the same. Notice of any meeting shall, for the purpose of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the articles of association of the company. In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the articles of association of the company.

16. In default of any articles of association as to voting, every member shall have one vote; and in default of any articles of association as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by § 19; and in default of any articles of association as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

17. A copy of any special resolution that is passed by any company under this Ordinance shall be forwarded to the Registrar and be recorded by him. If such copy is not so forwarded within twenty-one days from the date of the passing of the resolution the company shall incur a penalty not exceeding £2 for every day after the expiration of such twenty-one days during which such copy is omitted to be forwarded; and every director or officer of the company who shall knowingly and wilfully authorise or permit such default shall incur a like penalty.

18. A copy of every special resolution for the time being in force passed by any company under this Ordinance shall be annexed to, or embodied in, every copy of the articles of association that may be issued after the passing of such resolution; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding £1 for each copy in respect of which default is made; and every director and officer of the company who shall knowingly and wilfully authorise or permit such default shall incur a like penalty.

19. A notice shall be deemed to have been duly served within the meaning of § 16 when it has been served in terms of the following provisions :—

- (a) a notice may be served by the company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode, or by advertisement in such newspaper or newspapers as the directors may from time to time determine ;
- (b) each holder of registered shares whose registered place of abode is not in the Colony may from time to time notify in writing to the company an address in the Colony, which shall be deemed his registered place of abode within the meaning of the last preceding subsection ;
- (c) as regards those members who have no registered place of abode in the Colony, a notice posted up in the office shall be deemed to have been well served on them at the expiration of twenty-four hours after it is so posted up ;
- (d) any notice required to be given by the company to the holder of share warrants shall be given by advertising the same once in a newspaper circulating in the district in which the registered office of the company is situate ;
- (e) all notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members ; and notice so given shall be sufficient notice to all the holders of such share ;
- (f) any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post ; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed, prepaid, and put into the post office.

20. Any supplementary articles of association of any company which have been, prior to the twenty-third day of July, 1904, registered in the office of the Registrar, and which embody any *bonâ fide* alteration of the objects for which such company was originally formed, or any *bona fide* consolidation, sub-division, conversion or reduction of its registered capital, shall be, and are hereby declared to be, of such legal force and effect as if such aforesaid alteration, consolidation, sub-division, conversion or reduction had been duly effected under the provisions of this Ordinance.

21. This Ordinance may be cited as the Limited Liability Companies' Law Amendment Ordinance, 1904.

PART 2.—CORPORATIONS.

B.—UNLIMITED ASSOCIATIONS.

ORDINANCE No. 56 of 1903.

To Provide for the Incorporation of Societies.

1. It shall be lawful for any unincorporated society or association already formed and established, or which may at any time hereafter be formed and established, in this Colony for any lawful object approved by the Lieutenant-Governor, and to which society or association it shall be, in the opinion of the said Lieutenant-Governor, expedient to extend the privileges of this Ordinance (certificates whereof signed by the Attorney-General shall be produced before registration), to register such society or association in the office of the Registrar of Companies of this Colony, and to deposit in such last-mentioned office a copy of the rules or bye-laws of such society or association under the hand of the secretary thereof for the time being; certificate of which registration and deposit shall thereupon be issued by the said Registrar of Companies to the said secretary; provided always that no society or association formed or established for purposes of gain shall be entitled to be registered under this Ordinance.

2. Every such society or association registered under this Ordinance shall be competent to acquire and hold in its own name, and to sell, transfer, lease, or otherwise dispose of movable and immovable property in manner hereinafter mentioned, and to borrow and take up money from time to time upon mortgage or debenture for the purposes of such society or association, according to any rules or bye-laws which may be lawfully made in that behalf in manner hereinafter mentioned.

3. It shall be lawful for every society or association registered under this Ordinance, from time to time, at some meeting of its members, and by a resolution of a majority of the members then present, to make rules and bye-laws for the regulation, government, and management of such society or association, and for the protec-

tion, recovery, and custody, and for the sale, transfer, mortgage, lease, or disposal of the property thereof, and for the appropriation of the funds thereof, and for the audit of the accounts thereof, and the fines and forfeitures to be imposed on any member thereof, and the settlements of disputes between the society or association and any of its members, or any persons claiming by or through any member, or under the rules; also for the signature of contracts, and of powers of attorney to sue or defend or to pass transfer or bonds, and generally for carrying out the objects and purposes of such society or association; and to alter, amend, vary, or annul, as occasion may require, any such rules or bye-laws previously theretofore made and registered or deposited as aforesaid; provided that a copy of every bye-law and rule under the hand of the secretary shall be deposited in the office of the Registrar of Companies.

4. The members of every such society or association established or registered under this Ordinance shall have the power of electing such of its members as they shall deem fit to act as a committee or council of officers under such terms and conditions as the rules or bye-laws may provide.

5. Every such society or association established or registered under this Ordinance may, in all actions, suits, and legal proceedings, sue and be sued in the name in which it is registered.

6. Nothing in this Ordinance contained shall prevent any such society or association so registered from altering its name; provided that every such alteration shall be registered in the Registrar of Companies' Office and publicly notified in the *Gazette*; and provided, further, that no such alteration shall prejudice or affect any right which, previously to such alteration, has accrued to anyone against such society or association, or by such society or association against anyone, and that no such alteration shall abate or render defective any legal proceedings pending at the time when such alteration is made.

7. The fees mentioned in the Schedule hereto shall be paid to the Registrar of Companies in respect of the several acts to be performed by him in pursuance of the provisions of this Ordinance.

8. This Ordinance may be cited as the Societies and Associations Incorporation Ordinance, 1903.

SCHEDULE OF FEES.

	£	s.	d.
Certificate of deposit and registration of original rules and bye-laws	1	0	0
Registration of original rules and bye-laws	0	5	0
Registration of change of name	0	5	0

PART 2.—CORPORATIONS.

C.—COMPANY CASES.

NOTES.

Transvaal Decisions on Company Law.

FOREIGN COMPANY.—The rule was laid down in *Hayden & Co.'s Trustees vs. Thistle Reef G.M. Co.* (1895, O.R., p. 235) that "A Company incorporated or registered in a foreign country, and having its head office and Board of Directors in such foreign country, must be sued at the place of its domicile, being a foreign juristic person, and cannot be summoned before the Judge of the place where its property is situate without the leave of the High Court." *Illustration.*—The A. Company is registered with limited liability in France. It is not registered in the Transvaal, and has no head office or Board of Directors in the Transvaal, though it owns landed property in the Transvaal. Special leave of the Supreme Court must be obtained to sue the A. Co. in the Transvaal.

SERVICE OF SUMMONS ON A COMPANY.—Rule 21 of the Transvaal Supreme Court Rules lays down the following:—(a) Except as may be otherwise provided by any Law, where any corporation, church, society, or public institution is defendant in an action, service may be effected by delivering a copy of the summons to the Chairman or Secretary of the Board or Council controlling the affairs of such corporation, church, society, or institution, at the office or place where the affairs or business of such corporation, church, society, or institution is ordinarily carried on or transacted; or if service cannot for any reason be thus effected, the summons may be served upon such Chairman or Secretary in the same way as though he were the defendant or sole defendant named in the summons. (b) Where any partnership firm is defendant, service may be effected by delivering a copy of the summons to any member of the firm at the office or place where the business of the firm is ordinarily carried on; or if service cannot for any reason be thus effected, the summons may be served upon any member of the firm in the same way as though he were the defendant or sole defendant named in the summons. Where the business of any partnership firm is being wound up by any trustees or liquidators, service of the summons may be effected upon any one of such trustees or liquidators in the same way as though he were the defendant or sole defendant named in the summons. (c) Where any syndicate is defendant, service may be effected by delivering a copy of the summons to the manager, chairman,

secretary, or any person having the control of the business or affairs of the syndicate at the office or place where such business or affairs are ordinarily carried on; or if service cannot for any reason be thus effected, then the summons shall be served upon such one or more members of the syndicate either personally or by publication in such manner as the Court or Judge may direct. (d) Where the trustees of an insolvent estate, or executors or curators, or guardians of a minor, are defendants, service may be effected upon any one of them in the same way as though he were a defendant in his personal capacity.

LIABILITY—TRUST FUNDS.—Where the secretary of a Trust Company deposits moneys with the Company which he has received in his personal capacity as trustee in various insolvent estates, he may claim repayment of such moneys from the Company, even if no claim has been made against him by the creditors of such insolvent estates, inasmuch as the trustee is nevertheless personally liable to the creditors for such moneys (*Liquidators of the Republican and Colonial Co. vs. Moller*, O.R., 1894, November, p. 13).

TRUST FUNDS.—A Company, whose secretary has been appointed trustee in an insolvent estate, is liable for his acts in that capacity, if the Company has notified publicly that it guarantees the acts of the secretary (*Strange vs. Liquidators of the Republican and Colonial Co.*, O.R., 1894, November, p. 80).

LIABILITY—DIRECTOR.—A Company may be held liable for the acts of a person who acted as a director of the Company, notwithstanding the fact that according to its Articles of Association he was, for certain reasons, disqualified from being a director (*Liquidators of the Republican and Colonial Co. vs. Natal Bank*, O.R., 1894, December, p. 99).

LIABILITY—CONTRIBUTORIES.—Writs of execution cannot be issued against shareholders liable for calls in an insolvent Company unless preceded by a demand made by registered letter (*Ex parte Liquidators of the Republican and Colonial Co.*, O.R., 1894, August, p. 49).

LIABILITY—SYNDICATE.—Persons who peg a number of claims, and register such claims in the name of a Company, or of a Syndicate, without limited liability, are all liable as principal debtors to the creditors of such Company or Syndicate, so that, on a judgment obtained against the Company, a writ of execution may be issued against any member thereof (*Maidment vs. Nabob G.M. Co.*, O.R., 1894, September, p. 60).

LIABILITY—SERVANTS.—A Company is liable for the negligence of its servants who impose upon a fellow-servant a task outside the scope of his ordinary duties, in the performance whereof he is injured (*Eagleson vs. Argus Co.*, O.R., 1894, July, p. 12).

LIABILITY—SERVANTS.—A Company, like any other employer, is liable for personal injuries or other damage occasioned to one of its servants by a fellow-servant while engaged in a common employment (*Lewis vs. Salisbury G.M. Co.*, O.R., 1894, February, p. 7).

LIABILITY—ANIMAL.—A Gold Mining Company was held not to be liable for the poisoning of cattle drinking water while trespassing on the Company's property, where the owner of the cattle had knowledge of the dangerous nature of the water, and did not take sufficient care to prevent the injury (*Langlaagte G.M. Co. vs. Malan*, O.R., 1894, February, p. 44).

LIABILITY—SYNDICATE.—The members of a Syndicate form one person in law, and are thus entitled only as one person to the costs of a lawsuit (*Sivewright vs. Meyer*, O.R., 1894, February, p. 80).

LIABILITY—DIRECTORS—INSPECTION.—The Articles of Association of a Company imposed on the directors the duty of preparing accounts and issuing reports at stated periods, in order to acquaint the members with the position of the Company. It was held that every member of the Company was entitled to inspect such accounts and reports, even if such accounts and reports were declared to be confidential by a meeting of the Company (*Rutherford vs. Dormer*, H., p. 255).

LIABILITY—SYNDICATE.—A Syndicate formed for the purpose of floating a Company is not necessarily an anonymous partnership; and in that case the members of the Syndicate may be held liable in their personal capacity for debts of the Syndicate (*Joubert vs. Loss Brothers*, H., p. 231).

LIABILITY—SYNDICATE.—A Syndicate is not responsible for moneys advanced or paid by its Secretary without authority, where the Syndicate has derived no benefit therefrom (*Hugo vs. Magaliesberg Syndicate*, H., p. 283).

MEETINGS—BUSINESS.—A meeting of shareholders, convened for the purpose of considering with or without modification a proposal for reconstructing the Company, cannot take into consideration a proposition differing from the advertised business, in case the Articles of Association of the Company provide that in the notice convening the meeting the general nature of the business to be transacted must be described (*Lace vs. Modderfontein G.M. Co.*, O.R., 1894, August, p. 34).

MEETINGS—INCREASE OF CAPITAL—CHAIRMAN.—A meeting of a Company was convened for the purpose of considering an increase of capital, subject to an offer made by certain guarantors. At the meeting the Chairman stated that this offer had been withdrawn, and substituted an offer made by the same guarantors. Thereupon a shareholder present at the meeting made a higher offer, based on the same lines as the offer of the guarantors, and asked the Chairman to lay the same before the meeting. The Chairman refused to do this, but laid before the meeting the offer of the guarantors, which was accepted by a majority of the shareholders. It was held that the Chairman had exceeded his powers, by giving the preference to one offer before the other (*Cohen and Ehrlich vs. Witwatersrand G.M. Co.*, O.R., 1895, p. 381).

LIQUIDATION—ALLOTMENT.—Persons who have made application for shares in a Company, but to whom no shares have been allotted, are not liable to contribute to the debts of the Company (*Rissik vs. Liquidators Olifantsvlei Co.*, O.R., 1894, July, p. 6).

LIQUIDATION—INSOLVENCY.—The late Transvaal High Court decided that if it is impossible to obtain a sufficient attendance of shareholders in a Company, as prescribed by its Articles of Association, at a meeting convened for the purpose of deciding on liquidation, and the Company is insolvent, the Court can grant an order directing the liquidation of the Company (*Ex parte Liquidators of the May Deep Co.*, O.R., 1894, August 10, p. 52). This decision was given after the passing of Law No. 1, 1894, but does not appear to take into consideration the provisions of that Law as to liquidation.

LIQUIDATION—INSOLVENCY—RECONSTRUCTION.—An insolvent Company may be reconstructed, after proper notice to all interested parties (*Ex parte Liquidators of the Birthday Co.*, O.R., 1894, September, p. 58).

LIQUIDATION—SYNDICATE.—A Syndicate is dissolved by the death of one of its members (*Hugo vs. Magaliesberg Syndicate*, H., p. 283).

CHANGE OF NAME—TRANSFER.—The adoption of another name by a Company incorporated in the Transvaal, without any alteration in the constitution of the Company, does not make it a new Company; and it is, therefore, not necessary, in case the Company under its new name desires to pass transfer of property standing in its old name, first of all to register such property in the new name of the Company (*Ex parte Scholtz*, O.R., 1895, p. 365).

SUMMONS—COMPANY.—Where a Company is summoned in an action, the summons must state whether the Company is incorporated in the Transvaal or elsewhere (*Fuchs vs. New Zealand Insurance Co.*, O.R., 1897, p. 411).

SHARES.—An applicant for shares in a Company cannot refuse to receive share certificates which bear the endorsements of former holders (*Liquidators of the Olifantsvlei Co. vs. Marshall*, O.R., 1895, p. 68).

SHARES.—A promise to deliver a certain number of shares in a Company as soon as it is floated binds the promisor to deliver clean and unconditional shares; and the promisor is not entitled, upon flotation, to offer shares which cannot be negotiated except after the lapse of some time (*Roth vs. Oppenheim*, H., p. 202).

RECONSTRUCTION—TRANSFER.—A Company had been liquidated, and its assets and liabilities taken over by a new Company formed specially for that purpose with the same name, but with a change of capital. It was held that, though the second Company was composed of the same shareholders, it constituted a new *persona* in law distinct from its shareholders, and therefore a transfer of fixed property from the original to the new Company involved a change of ownership, and was liable to the payment of transfer duty (*Coetzeestroom Co. vs. Registrar of Deeds* [1902], T.S. 216).

ARTICLES OF ASSOCIATION—TRUST DEED.—“The articles of association under the Transvaal Statutes are the trust deed of the Company, and the objects of the Company are stated therein. The articles are conclusive as to the objects. A Company is registered with limited liability by the Law, and is incorporated to carry out the objects expressed in its trust deed; if it endeavoured to carry out other objects not incidental thereto, its action would be *ultra vires*. And the terms of its trust deed are conclusive as to its scope and objects” (*Hompes vs. Beaumont Estate Co.* [1903], T.S. 233).

VOLUNTARY WINDING-UP.—“Our statutory machinery is entirely different from that in force in England. . . . Voluntary winding-up depends with us entirely upon consent. Dissenting shareholders are at liberty to come to the Court; and the Court is in no way prevented from applying the machinery of compulsory winding-up by reason of the fact that there has been a resolution taken to wind up voluntarily” (*East Rand Deep vs. Joel* [1903], T.S. 625).

LIQUIDATION—TRANSFER.—On the liquidation of the B Company all its landed property was awarded to the X Company, which was the sole shareholder. The X Company applied to the Court to have transfer of this property registered in its name without the payment of transfer duty. It was held that the case did not fall within any of the exemptions laid down by the Transfer Duty Proclamation (No. 8, 1902), and that transfer duty had therefore to be paid (*African Farms vs. Registrar of Deeds* [1904], T.S. 50).

PART 2.—CORPORATIONS.

D.—BANKS.

LAW No. 2, 1893.

Concerning the Banks within the South African Republic.

1. Every bank, doing business in the South African Republic on the date of this Law coming into operation, shall be entitled to a permit from the Government authorising it to issue bank notes, subject to the provisions of this Law.

2. No bank, which shall be established in the South African Republic after the date of this Law coming into operation, nor any private person, shall be entitled to make or circulate its or his own bank notes without having previously obtained permission to do so from the Government, which shall make the necessary regulations for obtaining such permits.

The Government shall have the right to refuse such permits.

3. Whenever any bank in the South African Republic ceases to issue bank notes, or fails to pay its bank notes in legal coin, the right of such bank to issue bank notes shall immediately determine, and shall, in the last case, not be renewed.

4. The total amount of bank notes circulated by any bank shall not exceed its paid-up capital.

5. Bank notes of banks carrying on business in the South African Republic, which bank notes are not payable at Pretoria or at any other place in the South African Republic, shall not be made or circulated.

6. No bank notes shall be made or brought into circulation in the South African Republic for any amount less than £1 sterling.

The bank notes shall always be made payable at sight in legal coin at the head office, branches and agencies of the respective banks in the South African Republic. The payment of notes may be postponed by the branch offices and agencies, with exception of the Pretoria office and the place where the bank notes are payable, until specie can be received from the head office, or from Pretoria, in case the bank has no head office in the South African Republic.

7. Every bank, which issues, or shall have issued, bank notes in the South African Republic, shall at all times have in hand at its head office in this Republic, or both at its head office and branch offices in this Republic, a reserve in legal coin equal to $33\frac{1}{3}$ per cent. of the total value of all bank notes in circulation at the time, and assets in this Republic for the balance.

8. Every bank, which issues, or shall have issued, bank notes, shall keep a proper record of the numbers and value of the same.

9. Every bank shall submit to the officials, to be appointed by the Government, all account books concerning the issue of bank notes and the specie reserve, and shall allow such officials at all reasonable times to inspect the said books and to examine the specie reserve.

10. Every bank note made or circulated in the South African Republic shall be provided with a stamp of one penny, to be paid by the bank which makes or circulates such note.

11. For contravention of the provisions of this Law the following fines shall be inflicted:—

- (a) For making or circulating bank notes not in accordance with the provisions of this Law, and for neglecting to stamp the same, as prescribed hereby, a fine not exceeding £100 sterling for each such note.
- (b) For not having in hand a specie reserve of the fixed amount, a fine not exceeding an amount equal to the amount of the deficit for every day or part of a day during which the specie reserve is less than the fixed amount.
- (c) For making incorrect statements of the amount or the value of notes in circulation, or of the amount of the specie reserve in gold, a fine not exceeding £100.

- (d) For making intentionally false or misleading statements of the amount or of the value of notes in circulation, or of the amount of the specie reserve in gold; every person who makes or signs such statements shall be punished by imprisonment, with or without hard labour, for a term not exceeding three years.
- (e) For submitting to the Government a false statement (other than the cases mentioned in the two preceding sub-sections), or for contravention of any other provision of this Law, a fine of from £10 to £500, or imprisonment, with or without hard labour, for a period not exceeding one year.
- (f) Besides the fines and punishments aforesaid the Government shall have the power to withdraw the right to issue bank notes from the bank concerned.
- (g) The Government shall have the right to pay out of the recovered fines a reward to informants.

12. Every bank shall from time to time furnish the Government with the name of a responsible person or responsible persons at each of its branches and other offices, whose duty it will be to supply the different statements, tables, and the balance sheet mentioned in this Law, and he or they shall provide the same with his or their signature.

If any bank does not comply with the regulations of this article the Government shall have the right to cancel the permission for the making and circulating of bank notes, after having called upon and heard the bank.

13. For the purpose of this Law, the word "bank" includes any company, partnership, firm or person doing any business which is usually done by bankers; and the word "issue" or "circulate" shall include, *inter alia*, the payment or the depositing as security of any bank note by the bank responsible for the payment of the amount thereof, or by any other bank, or by any agent of a branch office or official of such bank, irrespective of such note ever having been issued before or not at the same or at any other place.

14. All bank notes which are in circulation on the day of promulgation of this Law may remain in circulation until they are deposited at, or received by, the bank which is bound to pay the

amount thereof, or by any other bank, or by any branch office, agent, or official of such bank. No such notes shall be again brought into circulation by the said banks, branch banks, agents or officials; provided that nothing in this article contained shall prohibit the circulation of such note, if by its tenor it is made payable in this Republic, and stamped in accordance with the provisions of this Law.

15. All bank notes now in circulation which have not been issued in accordance with the provisions of this Law shall be withdrawn after a certain day to be fixed by Government notice in the *Staatscourant*.

16. No bank notes circulated by any institution established or represented in the South African Republic shall be accepted in payment in the Government offices.

17. As soon as possible after the expiration of each month, fortnight, or week, as the Government may deem fit, every bank shall send in to the Government a summarised balance sheet containing such particulars of the transactions of its offices or branch offices in the South African Republic, and framed in such manner as shall be approved of by the Government. Moreover, every bank shall, as soon as possible after expiration of its financial year, send in to the Government a balance sheet, a profit and loss account, and a report for the past year. These documents shall be substantiated by proofs to the satisfaction of the Government, and shall be duly authenticated. The Government shall have these balance sheets, profit and loss accounts, and reports published in the *Staatscourant* at the cost of the bank concerned.

In case of contravention of any provision of this article, the defaulting bank shall pay a fine of £500 sterling, and shall forfeit its permit mentioned in Arts. 1 and 2 of this Law, as may be deemed fit by the Government.

18. Repealed by Ordinance 33 of 1903.

19. This Law shall come into operation immediately after publication in the *Staatscourant*.

PART 2.—CORPORATIONS.

E.—INSURANCE COMPANIES.

LAW No. 8, 1898.

For the Regulation of the Business of Insurance Companies in the South African Republic.

Whereas it is necessary and desirable to regulate by a Law the manner in which and the conditions on which Insurance Companies shall be allowed to carry on business in this State, it is hereby enacted as follows :—

1. Every Insurance Company whose principal office or place of business is situated beyond the limits of this State, and every company established in this State, whether already established or carrying on business, or hereafter to be established and to begin business within this State, which is managed or represented by directors, a secretary, manager or agent, and which has carried on business before the coming into operation of this Law, or hereafter shall begin to carry on business within this State, such as Fire, Accident, or Life Insurance Company, if such a company, after the coming into force of this Law, shall continue or begin such business in this State, shall be bound to deposit, within three months after such continuation or beginning of such business, with the Treasurer-General of this State, securities, either in cash or other securities approved of by the Treasurer-General, Auditor-General and Registrar of Deeds, to an amount of £5,000 sterling for fire or accident insurance, or for both together, and of £10,000 sterling for life insurance, whether associated or not with fire or accident insurance or with both.

2. Every such company may, after proper notice to the Treasurer-General, Auditor-General and Registrar of Deeds, with the approval of the said officials, exchange any of the deposited securities for others of equal value or for cash, and such substituted securities shall be dealt with in every respect as though they had been deposited originally.

3. Every company which deposits the aforesaid sums in cash as security shall be entitled to receive from the Government interest at the rate of 3 per cent. per annum, on the sums deposited, payable at the end of each year.

4. The Treasurer-General shall give a proper receipt, in accordance with the forms hereunto attached, marked A and B, for the deposited securities mentioned in Art. 1.

5. Every such company shall be bound, before it shall be able to carry on business, to take out an annual licence of £20 sterling, and no such licence shall be issued until proof has been given to the official charged with the issue of such licence, that the security mentioned in Art. 1 of this Law has been deposited.

6. Every such company shall be bound, before it shall be able to obtain such a licence, to deposit certified copies of its trust deed, with the exception of companies to be formed here under the already existing Laws, and shall further be bound to choose a "*domicilium citandi et executandi*" in this State, and to give notice thereof in the *Staatscourant*.

7. Every Insurance Company as aforesaid shall, after each financial year of such company, forward to the Treasurer-General, together with all the returns which may be required by this Law, a sworn return showing the total number of insurances in force, the total number of new insurances effected, with the premiums having reference thereto received during the year, and the policies which have lapsed during the said year, all having reference only to the business of the company carried on in this Republic, and shall further be bound to forward to the Treasurer-General a certified return showing the assets and liabilities of such company, together with copies of the balance sheet and revenue account for the year, having reference to the entire business of the company, no matter where it is carried on.

8. Every company which does insurance business within this State shall, within three months after the coming into operation of this Law, or after starting its business, or when a change is made in its *personnel*, as the case may be, publish in the *Staatscourant* the name of its chief official, manager, secretary or agent in this State, and the place where the principal office of the company must be considered to be fixed, and where, moreover, the “*domicilium citandi et executandi*” of such company shall be established.

9. Every such principal official, manager, secretary or agent, whose appointment as such has been published in the *Staatscourant*, may sue or be sued in the name of the company which he represents, and all notices, summonses or other legal proceedings shall be valid against such company if they are served on such principal official, manager, secretary, or agent, or are left at the principal office in the hands of any servant of the company there, or if, in the absence of such a person, they are attached to the front door of such principal office.

10. If any document which, under the provisions of this Law, is required to be deposited, is false in any important particular, the person who signed or delivered it shall be punished with a fine not exceeding £100, or imprisonment with or without hard labour for a period not exceeding six months.

11. Any company which neglects to deliver any returns required by this Law, for a period of three months or more, may, at the request of the State Attorney and after notice, be prevented by the High Court from carrying on business in this State, either for an indefinite time or for such period as the Court may deem fit to determine.

12. The Treasurer-General shall see, and it shall be his duty so to do, that every company falling under the operation of this Law properly complies with the provisions thereof, and he shall be bound to deliver annually to the Government a report setting out the particulars of the business of every such company in accordance with the returns sent in under the Law.

13. All claims arising out of policies of life insurance issued in this State shall be paid, if such payment is desired, to the person in this State entitled to the insurance money, and the receipt of the

executor or other person entrusted with the administration of the estate in question shall be complete proof that such company has duly paid the amount of the policy.

14. The security mentioned in Art. 1 of this Law shall operate as a guarantee to the Government and the inhabitants of this State of the good faith of and the honest transaction of business by every such company, and such security may be taken in execution for any judgment of any competent Court against such company.

If an Insurance Company, as indicated in Art. 1 of this Law, desires to close its business within this State and to do no further business here, and has actually closed its place of business and has ceased to do business, it shall be entitled to get back the security mentioned in the said article, provided a sufficient portion thereof be left to satisfy all its obligations and debts due to persons within this State, and any probable expenses connected with such amounts due or to become due, everything to be determined by the Treasurer-General as he thinks fit. If payments are from time to time made to creditors and policy-holders within this State by the company the Treasurer-General shall be entitled to reduce and to return the deposited security proportionately, provided he takes care that sufficient security remains for the claims of the remaining creditors and policy-holders within the State. In carrying out this provision the Treasurer-General shall be entitled, before giving back the security or any part thereof, to demand affidavits from the officials and inspection of the books of the company, or such other proof as he may consider necessary.

15. No such company may include in any policy to be issued in this State any condition which may be in conflict with the provisions of the military or commando law, and such condition shall in no case be valid, and may not be pleaded in defence against a claim for payment of such policy if the person assured dies in the military or commando service.

16. If any agent, director, secretary, manager or representative of one of the herein-mentioned insurance companies contravenes or does not comply with one or more provisions of this Law, he shall be liable to a fine not exceeding £100 sterling, or to imprisonment, with or without hard labour, for a period not exceeding six months, or both together.

17. The Courts of Landdrosts and Mining Commissioners shall have jurisdiction over contraventions, with the exception of those mentioned in Art. 11.

18. Law No. 12, 1892, for the regulation of the business of Insurance Companies in the South African Republic, and also Law No. 4, 1896, amending Art. 7 of Law No. 12, 1892, are hereby repealed.

19. This Law shall come into operation immediately after publication in the *Staatscourant*.

RECEIPT FORM "A."

Received from the.....through
Mr.....the sum of.....pounds
sterling, being the security deposit mentioned in Art. 1 of Law 8, 1898,
which amount the Government of the South African Republic hereby
declares to have received from the.....for safe keeping, and
promises to pay back to the said Company at this office three months
after written notice has been given by it to the Government of the South
African Republic that it wishes to close its business in this State, and it
has clearly proved to the satisfaction of the Government that it has no
further current liabilities towards third parties resident within this
State.

The interest of the amount aforesaid shall be 3 per cent., payable
yearly by the Treasurer-General at his office, to the representative of
the Insurance Company, on or before February 1st of each year.

The Insurance Company has the power, moreover, after giving three
months' notice, to exchange this security deposit in cash for a security
deposit in documents approved of by the Government, on receiving a
receipt according to Form B, in accordance with the provisions con-
tained in Art. 2 of this Law.

Pretoria,.....18.....

RECEIPT FORM "B."

Received from the.....through
Mr.....the following documents, viz.:.....being
the security deposit mentioned in Art. 1 of Law 8, 1898, which docu-
ments the Government of the South African Republic hereby declares
that it holds in safe custody for the said Insurance Company, and which
it will return to the latter in exchange for other documents of equal
value to be approved of by the Government or for cash, in case the Insur-

ance Company so desires, or if the said Company has given the Government of the Republic written notice that it wishes to close its business in this State, and has clearly proved to the satisfaction of the said Government that it has no further current liabilities towards third persons resident within this State. The authorised representative of the Insurance Company is entitled to receive the interest on these above-mentioned documents.

Pretoria,.....18.....

PART 3.—SPECIAL PROPERTY RIGHTS.

A.—PATENTS.

PROCLAMATION No. 22, 1902.

1. This proclamation shall come into operation on the 1st day of May, 1902, and such date is hereinafter referred to as the commencement of this Proclamation.

2. Subject to the provisions of § 60 of this Proclamation, Law No. 10 of 1898, and any other Law inconsistent with or repugnant to the provisions of this Proclamation, shall be and are hereby repealed.

3. It shall be lawful for the Governor to appoint a Commissioner of Patents (hereinafter called the "Commissioner"), whose office shall be called the "Patent Office," and shall be established at Pretoria.

4. There shall be a seal for the Patent Office, and impressions thereof shall be judicially noticed and admitted in evidence.

5. Every person who is the true and first inventor, or the legal representative of a true and first inventor, of an invention, as hereinafter defined, may obtain, either alone or jointly with one or more person or persons, the exclusive right and privilege to make, use, exercise and sell the same within this Colony for his own benefit in such manner and for such period and under such conditions as are hereinafter prescribed.

This right and privilege (hereinafter referred to as a patent) shall be granted by Letters Patent, to be issued by the Commissioner in manner hereinafter prescribed.

Save as provided by §§ 23 and 53 respectively of this Proclamation, the expression "invention" means any new and useful art, process, machine, manufacture, or composition of matter, or any new and useful improvement thereof capable of being used or applied in trade or industry, and not known or used by others in this Colony, and not patented or described in any printed publication in this Colony or any foreign country before the application for a patent in respect of the same, and not in public use or on sale in this Colony or any foreign country for more than two years prior to such application, unless the same is proved to have been abandoned.

6. An application for a patent shall be as nearly as possible in the form given in Schedule "A," or in such other form as may from time to time be prescribed, and addressed to the Commissioner.

An application for a patent must be signed by the applicant, but all other communications between the applicant and the Commissioner, and all attendances by the applicant before the Commissioner, may be made by or through an attorney of the Court or patent agent duly authorised to the satisfaction of the Commissioner.

7. (1) An application for a patent must contain a declaration to the effect that the applicant is in possession of an invention whereof he, or in the case of a joint application, one or more of the applicants claims or claim to be, or to be the legal representative of, the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or complete specification.

(2) Every application must contain an address in this Colony, to which all notices, requisitions and communications of every kind may be made.

(3) A provisional specification must describe the nature of the invention, and be accompanied by drawings if required.

(4) A complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings if required.

(5) If a provisional specification is accompanied by drawings to the satisfaction of the Commissioner, the complete specification need not be accompanied by drawings, but may refer to the drawings accompanying such provisional specification.

(6) A specification, whether provisional or complete, must commence with the title, and, in the case of a complete specification, must end with a distinct statement of the invention claimed.

(7) As far as possible, the provisional and complete specifications shall be in the form given in Schedules "B" and "C," and shall be in the English language.

8. The Commissioner shall examine every application to ascertain whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject matter of the invention.

9. (1) If the Commissioner, on such examination, finds that the nature of the invention is not fairly described, or that the application or drawings has not or have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject matter of the invention, he may refuse to accept the application, or require that the application, specification, or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the Commissioner so directs, bear date as from the time the requirement is complied with.

(2) Where the Commissioner refuses to accept an application, or requires an amendment, the applicant may appeal from his decision to the Attorney-General.

(3) The Attorney-General shall, if required, hear the applicant and the Commissioner, and may make an order determining whether and subject to what conditions (if any) the application shall be accepted.

(It shall be lawful for the Attorney-General, on the hearing of an appeal to him from any decision of the Commissioner of Patents in any case in which any such appeal is given by "The Patents Proclamation, 1902," to examine witnesses on oath, and administer oaths for that purpose.)

(4) The Commissioner shall, when an application has been accepted, give notice thereof to the applicant.

(5) If after an application for a patent has been made, but before the patent thereon has been sealed, another application for a patent is made, accompanied by a specification bearing the same or a similar title, the Commissioner may determine, subject to an appeal to the Attorney-General, whether the invention comprised in both applications is the same, and if so he may refuse to seal a patent on the application of the second applicant.

10. (1) The Commissioner shall keep at his office proper books and registers, in which shall be entered the names of all patents which have been applied for, together with the dates on which the applications and the provisional and complete specifications have been lodged with him.

(2) On payment of the amount mentioned in Schedule "H" the Commissioner shall give a receipt to the applicant or his attorney, proving that such entries have been made.

(3) Where an application for a patent in respect of an invention has been accepted the invention may, during the period between the date of the application and the date of sealing such patent, be used and published without prejudice to the patent to be granted for the same, and such protection from the consequences of use and publication is in this Proclamation referred to as provisional protection.

(4) No one but the Commissioner, or someone acting on his behalf, shall be allowed to inspect any specification until the advertisement mentioned in § 13 has been published.

11. (1) If an applicant supplies only a provisional specification with his application he shall be obliged to send in a complete specification within nine months from the date of his application; and if he fails to do so he shall be considered to have abandoned his application. The applicant may, however, within such period of nine months, notify to the Commissioner that he desires his provisional specification to be regarded as a complete specification, and if such provisional specification complies with the conditions hereinbefore provided with reference to complete specifications to the satisfaction of the Commissioner, subject to appeal to the Attorney-General, the same shall be treated as a complete specification. (See § 9, sub-section (3), above.)

(2) After a complete specification shall have been accepted by the Commissioner, or after a provisional specification shall have been accepted as a complete specification as hereinbefore provided, and until such time as the patent shall be sealed, or until the period shall have elapsed within which such sealing must take place, the applicant shall enjoy the same rights and privileges as if a patent had been granted to him for his invention on the date of the acceptance of such complete specification; provided that an applicant shall not be entitled to institute any proceedings for infringement until a patent for the invention has been granted to him.

12. (1) Where a complete specification is left after a provisional specification the Commissioner shall examine both the provisional and complete specifications for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification.

(2) If the Commissioner finds that the conditions hereinbefore contained have not been complied with, he may refuse to accept the complete specification, unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal to the Attorney-General.

(3) The Attorney-General shall, if required, hear the applicant and the Commissioner, and may make an order determining whether and subject to what conditions, if any, the complete specification shall be accepted.

(4) Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void; provided always that the Commissioner may extend the said period of twelve months by a period not exceeding three months on payment of the prescribed fee.

13. On the acceptance of the complete specification the Commissioner shall issue a notice to the applicant to that effect, which the applicant shall forthwith advertise in three issues of the *Gazette*, and in such other newspaper or newspapers as the Commissioner may require, and thereupon the application and specification or specifications with the drawings, if any, shall be open to public inspection. The applicant shall, within the period mentioned in the next succeeding section, file with the Commissioner a copy of the *Gazette* in which the notice of the acceptance of the specification aforesaid has been published.

14. (1) Any person may, at any time within two months from the date of the latest advertisement of the acceptance of a complete specification, give notice in writing at the Patent Office of objection to the grant of a patent on any one or more of the following grounds:—

(a) that the invention has been fraudulently obtained to the prejudice of another's rights;

- (b) that the person represented as being the true and first inventor is not such ;
- (c) that the invention is not new ;
- (d) that the invention is not capable of being patented in terms of § 5 of this Proclamation ;
- (e) that the complete specification, or the provisional specification accepted as such, as hereinbefore provided, has reference to the theoretical principles, hypotheses, methods, systems, discoveries or conceptions, the manner of applying or using which is not set out ;
- (f) that the complete specification, or the provisional specification accepted as such, as hereinbefore provided, is not sufficient, *i.e.*, that mention of a part of the invention has been omitted, or that it has been insufficiently explained ;
- (g) that the invention, or the application of the same, is contrary to law, public order, or good morals ;
- (h) that the title of the invention fraudulently sets forth another than the true subject matter of the invention ;
- (i) that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the objector in the interval between the leaving of the provisional and the leaving of the complete specification.

(2) A notice of opposition to the grant of a patent shall be in the form given in Schedule "D," and shall state the ground or grounds on which the person giving such notice (hereinafter referred to as the objector) intends to oppose the grant, and must be signed by him. Such notice shall state his address for service in this Colony.

(3) The Commissioner shall give notice to the applicant of the objection to his application and the grounds on which it is based, and shall give notice to both the applicant and the objector of the place where, and the day and the hour when, he will consider the application and the objections thereto.

15. (1) At the time and place stated in the last-mentioned notice the Commissioner shall hear the applicant and the objector either personally, or by their attorneys or counsel, and their respective witnesses, if any.

(2) The Commissioner shall have power to determine whether any evidence in support of, or in opposition to, the application shall be by means of affidavit, or *vivâ voce* on oath, or partly affidavit and partly *vivâ voce*, and may, at the request of either party, direct cross-examination of any witness upon his affidavit.

(3) In any proceeding under this section the Commissioner shall have power to issue subpoenas for the attendance of witnesses, to administer oaths, to issue commissions *de bene esse* for the taking of evidence in this Colony or any foreign country, to commit for contempt of court, or to grant discovery of documents or inspection.

(4) The Commissioner may call in the assistance of experts and other persons, and may decide whether any, and what, remuneration shall be paid to them for such assistance, either by the applicant or by the objector.

(5) The Commissioner shall have power to order that the costs of any proceeding under this section shall be paid by either party thereto, in all respects as if the Commissioner were a Judge of the Court, and such costs shall be taxed by the taxing officer and paid, and the payment thereof may be enforced in the same manner as if the same were costs allowed by a Judge of the Court.

(6) Either party shall have the right to appeal to the High Court of the Transvaal, from the decision of the Commissioner, and such appeal shall be dealt with by the said Court in all respects as if it were an appeal from a Court of inferior jurisdiction.

(7) In case the objector or the applicant is residing abroad, or has no fixed property within this Colony, then the applicant or the objector, prior to the hearing of the application or objection or any appeal, as the case may be, shall have the right to require that security to the satisfaction of the Commissioner or the said Court, as the case may be, be lodged by the applicant or objector for the costs, and if such security is not lodged or given, the application or objection or appeal, as the case may be, shall not be taken into consideration by the Commissioner or the said Court.

16. If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, the Commissioner shall cause a patent to be sealed with the seal of the Patent Office, and a patent so sealed shall have the same effect as if it were sealed with the seal of the Governor.

17. The issue of a patent for an invention, the use of which is contrary to law, public order, or good morals, may be refused.

18. The sealing of a patent shall take place as soon as possible, but not later than fifteen months after the date of the application, except in the following instances:—

- (a) In case the sealing is delayed on account of an appeal or on account of objections being lodged against the granting of the patent, the sealing may take place at such time as the Commissioner shall determine.
- (b) In case the applicant dies before the expiration of the period of fifteen months aforesaid, the letters patent may be granted to his legal representative, and may be sealed at any time within twelve months after the decease of the applicant.

Provided always that where an extension of time is allowed by the Commissioner for the acceptance of a complete specification under sub-section (4) of § 12 of this Proclamation, the Commissioner shall allow an extension of a period not exceeding four months after the said fifteen months for the sealing of the letters patent.

19. Every patent granted under this Proclamation shall be drawn up as nearly as possible in the form given in Schedule "E," and shall be dated and sealed as of the day of the application. Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification. Provided also that in case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application.

20. Where an application for a patent has been abandoned or become void before the publication of the complete specification, the specification or specifications and drawings (if any) accompanying, or left in connection with, such application shall not at any time be open to public inspection, or be published by the Commissioner.

21. (1) The term limited in every patent for the duration thereof shall be fourteen years from its date.

(2) But every patent shall, notwithstanding anything therein or in this Proclamation, cease if the patentee fails to make the payments prescribed in Schedule "H" within the prescribed times.

(3) If, nevertheless, in any case by accident, mistake, or inadvertence, a patentee fails to make any prescribed payment within the prescribed time, he may apply to the Commissioner for an enlargement of time for making the payment.

(4) Thereupon the Commissioner shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee for enlargement, enlarge the time accordingly for such period as he shall think just, subject only that if any proceeding shall be taken in respect of an infringement of the patent, committed after a failure to make any payment within the prescribed time and before the enlargement thereof, the Court, before which the proceeding is proposed to be taken, may, if it shall think fit, refuse to award or give any damages in respect of such infringement.

22. If a patent has been lost or destroyed, or if it has been proved to the satisfaction of the Commissioner that the document cannot be produced, a duplicate may be issued on a sworn declaration to that effect being made, after four publications during three months in the *Gazette* and such other newspaper or newspapers as the Commissioner may direct, and on payment of the fee prescribed by Schedule "H."

23. (1) The grant of a patent or similar exclusive privilege for an invention in a foreign country to any person, shall not be a bar to the grant of a patent for the same invention, or any part thereof, in this Colony to the same person, provided that the application for the grant of a patent in this Colony shall be made within twelve months of the date of the grant of such foreign patent or similar exclusive privilege.

(2) The publication in this Colony, or any foreign country, during the aforesaid period of any description of the invention, or the use therein during such period of the invention, shall not invalidate the patent which may be granted for the invention in this Colony.

24. All specifications, with the drawings, if any, appertaining thereto, deposited at the office of the Commissioner in manner aforesaid shall remain in his custody at the Patent Office.

25. (1) An applicant or a patentee may from time to time, by request in writing left at the Patent Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same.

(2) The request and the nature of such proposed amendment shall be advertised by publication in the *Gazette* and such other newspaper or newspapers as the Commissioner may require, in the form prescribed by Schedule "F" to this Proclamation, and at any time within three months from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(3) Where such notice is given, the Commissioner shall give notice of the opposition to the person making the request, and shall hear and decide the case, subject to an appeal to the Attorney-General.

(4) The Attorney-General shall, if required, hear the person making the request and the person so giving notice, and being, in the opinion of the Attorney-General, entitled to be heard in opposition to the request, and shall determine whether, and subject to what conditions, if any, the amendment ought to be allowed. (See § 9, sub-section (3), above.)

(5) When no notice of opposition is given, or the person so giving notice does not appear, the Commissioner shall determine whether, and subject to what conditions, if any, the amendment ought to be allowed.

(6) When leave to amend is refused by the Commissioner the person making the request may appeal from his decision to the Attorney-General.

(7) The Attorney-General shall, if required, hear the person making the request and the Commissioner, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed.

(8) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before the amendment.

(9) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all Courts and for all purposes be deemed to form part of the specification.

(10) The foregoing provisions of this section do not apply when and so long as any action for infringement or proceeding for revocation of a patent is pending.

26. In any action for infringement of a patent and in a proceeding for revocation of a patent the Court or a Judge in Chambers may at any time order that the patentee shall, subject to such terms as to costs and otherwise, as the Court or a Judge in Chambers may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the meantime the trial or hearing of the action shall be postponed.

27. Where an amendment by way of disclaimer, correction, or explanation has been allowed under this Proclamation, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

28. Every amendment of a specification shall be advertised in manner prescribed by the Commissioner.

29. If, on the petition of an interested party, it is proved to the satisfaction of the Governor that, in consequence of the refusal of a patentee to grant licences to use his invention on reasonable terms—

- (a) the patent is not being made use of in this Colony; or
- (b) the reasonable demands of the public in connection with the invention cannot be met; or
- (c) anyone is prevented from making use of or deriving the full benefit from an invention of which he is possessed—

the Governor may order the patentee to grant licences for the use of the said invention, under such conditions as to the amount of royalties, security for payment, or otherwise, as the Governor, regard being had to the nature of the invention and the circumstances of the case, may deem just, and any such order may be made an order of the Court.

30. There shall be paid to the Commissioner in respect of the several instruments described in Schedule "H" to this Proclamation the fees in that Schedule mentioned, and there shall likewise be paid in respect of any other matters under this Proclamation such fees as may from time to time be prescribed by the Commissioner with the consent of the Governor.

31. (1) Every patentee may address an application to the Governor asking for an extension of the terms of his patent. Such an application must be sent in at least six months previous to the expiration of such term.

(2) The Governor shall refer such application to the High Court of the Transvaal for consideration and report.

(3) The Court shall, on such reference being made by the Governor, appoint a day for hearing such application, and, at least two months before the day appointed for such hearing, the applicant shall publish, in manner prescribed by the Court, a notice of the contents of his application as nearly as possible in the form prescribed in Schedule "G."

(4) Everyone interested in making objection to the application may lodge his objections in writing with the Registrar of the Court; provided that such be done at least one month before the day appointed for the hearing of the application.

(5) The applicant and everyone who has lodged any objection in writing in the manner prescribed by law may appear in person or by counsel to plead his case.

(6) The Court, in its report, shall take into consideration the nature and the merits of the invention and the value thereof to the public, the profit derived therefrom by the patentee, and the further circumstances of the case. The report shall further state whether, in the opinion of the Court, it is advisable to grant an extension, and, if so, for how long and under what conditions or restrictions. The Court shall further direct by whom the costs of the case between the parties shall be borne, and an order as to the costs made or granted by the Court may be legally enforced.

32. The Governor shall have the right, after considering the application for an extension and the report of the said Court thereon, to grant an extension of the term of the patent under such conditions and restrictions, and for such a length of time (in no case longer than fourteen years), as he may think desirable. The extension of the term of the patent shall date from the day of the expiration of the original term thereof.

33. (1) There shall be kept at the Patent Office a register called "The Register of Patents," wherein shall be entered the dates of applications for patents, the names and addresses of grantees of patents, notifications of assignments and transfers, and of transmission of patents, of licences under patents, and of amendments, exten-

sions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed, provided that there shall not be entered in the register, or be receivable by the Commissioner, any notice of any trust express, implied or constructive.

(2) The register of patents shall at all convenient times be open to the inspection of the public on payment of the fee prescribed in Schedule "H."

(3) Any person may, on payment of the fee prescribed in Schedule "H," obtain a certified copy or extract from the register of patents, sealed with the seal of the Patent Office.

(4) The register of patents shall be *prima facie* evidence of any matters by this Proclamation directed or authorised to be inserted therein.

(5) Copies of deeds, licences and any other documents affecting the proprietorship of any patent, or in any licence thereunder, must be supplied to the Commissioner in the prescribed manner for filing in the Patent Office.

34. Printed or written copies or extracts, purporting to be certified by the Commissioner and sealed with the seal of the Patent Office, of or from patents, specifications and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all Courts in this Colony and in all proceedings without further proof or production of the originals.

35. Any person who makes, or causes to be made, a false entry in a register kept in terms of this Proclamation, or produces or tenders, or causes to be produced or tendered in evidence, any such false entry or false copy or extract, knowing the same to be false, shall be punished with imprisonment, with or without hard labour, for a period not exceeding five years.

36. (1) The Court may, on application by any person who complains of an unjustifiable entry or unjustifiable omission of an entry, or of any other particulars in such register, make such order for the striking out, insertion, or amendment of such entry as the Court shall deem necessary. The Court may also dismiss the application, and make an order as to costs in either case.

(2) The Court may, in any proceeding under this section, decide any question that it may be necessary or expedient to decide for the rectification of a register, may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the Commissioner.

37. The Commissioner may, on request in writing, accompanied by the fee prescribed in Schedule "H"—

- (a) correct any clerical error in, or in connection with, an application for a patent; or
- (b) correct any clerical error in the name, style or address of the registered proprietor of a patent, or any licence thereunder.

38. An application may be made to the Court by petition for the revocation of a patent on one or more of the following grounds:—

- (a) that the patent has been fraudulently obtained, to the prejudice of another's rights;
- (b) that the person represented as being the true and first inventor was not such;
- (c) that the invention was not new;
- (d) that the invention is not capable of being patented in terms of § 5 of this Proclamation;
- (e) that the complete specification, or the provisional specification accepted as such, as hereinbefore provided, has reference to theoretical principles, hypotheses, methods, systems, discoveries or conceptions, the manner of applying or using which is not set out;
- (f) that the complete specification, or the provisional specification accepted as such, as hereinbefore provided, is not sufficient, *i.e.*, that mention of a part of the invention has been omitted, or that it has been omitted, or that it has been insufficiently explained;
- (g) that the invention, or the application of the same, is contrary to law, public order, or good morals;
- (h) that the title of the invention fraudulently sets forth another than the true subject matter of the invention;
- (i) that the prescribed payments have not been duly made.

39. A petition for revocation of a patent may be presented by the following persons only, that is to say :—

- (a) The Attorney-General.
- (b) Any person expressly authorised thereto by the Attorney-General.
- (c) Any person who alleges that the patent has been obtained in fraud of his rights, or of the rights of any person under or through whom he claims.
- (d) Any person who alleges that he or any person under or through whom he claims was the true inventor of any invention included in the claim of the patentee.
- (e) Any person who alleges that he, his partner, or any person under or through whom he claims had publicly manufactured, used, or sold before the date of the patent, anything which the patentee claims as his invention.

40. In a proceeding for the revocation of a patent the following provisions shall be observed :—

- (1) The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and if one of such objections is "want of novelty" he must state the time and place of the alleged previous publication or user, and if such publication is to be found in books, papers, or other documents, copies or extracts of the same, stating the title, edition, place, and date of publication or compilation thereof, shall be annexed to the particulars. No evidence shall, except by leave of the Court or a Judge in Chambers, be admitted in proof of any objection of which particulars are not so delivered.
- (2) Particulars delivered may be, from time to time, amended by leave of the Court or a Judge in Chambers.
- (3) The defendant shall have the right to begin and give evidence in support of his patent, and if the plaintiff produces evidence against the validity of the patent the defendant shall be allowed to bring rebutting evidence.

41. Where a patent has been revoked on the ground of fraud the Commissioner may, or the application of the true inventor made in terms of this Proclamation, issue to him a new patent (in place of the revoked one), the date of which shall be the date of revocation of the patent so revoked. This new patent shall, however, cease on the revocation of the term for which the revoked one was granted.

42. (1) Any person who represents that any article sold by him is a patented article when no patent or similar exclusive privilege has been granted for the same shall be liable for every offence to a fine not exceeding £100 sterling, or to imprisonment, with or without hard labour, for a term not exceeding three months.

(2) A person shall be deemed for the purposes of this Proclamation to represent that an article is patented if he sells the article with the word "patent" or "patented," or any word or words expressing or implying that a patent or similar exclusive privilege has been obtained for the article, stamped, engraved, or impressed on or otherwise applied to the article.

43. Subject to the provisions of sub-section (2) of § 11 of this Proclamation, an action for an infringement of a patent may be instituted in the Court by a patentee against anyone who, after the publication of the complete specification, exercises, sells, makes use of, applies, imitates, or copies the invention in question without the consent or licence of the patentee. Every ground on which a patent may be revoked shall be available by way of defence to an action for the infringement of a patent.

44. (1) In an action for infringement of a patent the plaintiff must deliver with his statement of claim, or by order of the Court or a Judge in Chambers at any subsequent time, particulars of the breaches complained of.

(2) The defendant must deliver with his statement of defence, or by order of the Court or a Judge in Chambers at any subsequent time, particulars of any objections on which he relies in support thereof.

(3) If the defendant disputes the validity of the patent the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds is "want of novelty," must state the time and place of the previous publication or user alleged by him;

and if the publication is to be found in books, papers, or other documents, copies or extracts of the same, stating the title, edition, place and date of publication or compilation thereof, shall be annexed to the particulars of objections.

(4) At the hearing no evidence shall, except by leave of the Court, be admitted in proof of an alleged infringement or objection of which particulars are not so delivered.

(5) Particulars delivered may be from time to time amended by leave of the Court or a Judge in Chambers.

(6) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them, unless the same is certified by the Court to have been proven or to have been reasonable and proper, without regard to the general costs of the case.

45. In an action or proceeding for infringement or revocation of a patent the Court may, of its own accord, or at the request of one or both of the parties, call in the services of an expert, with whose assistance the whole case or a part thereof shall be dealt with and decided. The remuneration of such expert shall be fixed by the Court.

46. In an action for infringement of a patent the Court may, on application of one of the parties, order the suspension or cessation of work, the production, furnishing or keeping of accounts, or the holding of an inspection, and may impose such terms and give such directions respecting the same and the proceedings thereon as the Court may see fit.

47. In an action for infringement of a patent the Court may certify that the validity of the patent came in question; and if the Court so certifies, then in any subsequent action for infringement the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between attorney and client, unless the Court trying the action certifies that he ought not to have the same.

48. Where any person claiming to be the patentee of an invention by circulars, advertisements, or otherwise threatens any other person with legal proceedings or liability in respect of any alleged manufacture, use, sale, or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and

may obtain an interdict against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby if the alleged manufacture, use, sale or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats; provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

49. Every patent shall be granted for one invention only, but may contain more than one claim, provided that no one shall be entitled to object to a patent on the ground that it embraces more than one invention.

50. (1) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative.

(2) Every such application must be made within twelve months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.

51. A patent granted to the true and first inventor shall not become ineffective or void by reason of an application for letters patent being made in fraud of him, or by reason of provisional protection being obtained thereupon, or by reason of the use or publication of such invention after the filing of the application during the period of provisional protection.

52. A patentee may transfer to another person his patent for any place in or for any part of this Colony as effectually as if the patent had been granted only for such a place in or such part of this Colony; but no transfer or cession of a patent, or part of a patent, shall be legal unless such transfer or cession be made by means of a notarial deed and duly registered at the office of the Commissioner.

53. The exhibition of an invention at an international or industrial exhibition, or the publication of a description of the invention during the time of any such exhibition, or the use of the invention for purposes of the exhibition at the place where it is held, or the use of the invention during the time of the exhibition at another place by someone not authorised thereto by the inventor shall not prejudice the right of the inventor or his legal representative to

apply for and obtain provisional protection and a patent for his invention, and shall not affect the validity of the patent obtained on such application; provided always that the following two conditions are observed:—

- (a) The exhibitor shall, previous to exhibiting his invention, inform the Commissioner in writing of his intention so to do.
- (b) The application for a patent must be made within six months from the opening of the exhibition.

54. The Governor may demand from a patentee at any time a model of his invention on payment of the costs of making the same, the amount of which, in case of dispute, shall be fixed by arbitrators. The destination of such models shall be determined by the Governor.

55. If anyone is unable, by reason of tender age or weakness of mind or other incapacity, to make a declaration or perform an act required or permitted by this Proclamation, or by any rules made under it, then his guardians or curators, or failing these a person appointed by the Court, on the application of anyone on behalf of such person, or on the application of anyone interested in the making such declaration, or performing such act, may make such a declaration or one as near as possible to the one prescribed, or do such act in the name and on behalf of such aforesaid person. All acts done by such representative shall, for the purposes of this Proclamation, be as effectual as if done by the person so represented.

56. Where any discretionary power is by this Proclamation given to the Commissioner he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally, or by his attorney or patent agent.

57. (1) A patent shall have to all intents the like effect as against His Majesty the King, his heirs and successors, as it has against a subject.

(2) But the officers or authorities administering any department of the service of His Majesty in his Colonial Government may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Comptroller of the Treasury, between those officers

or authorities and the patentee, or in default of such agreement on such terms as may be settled by the Comptroller of the Treasury after hearing all parties interested.

58. (1) The inventor of any improvement in instruments or munitions of war, his heirs, executors or assigns (who are in this section comprised in the expression "the inventor") may (either for or without valuable consideration) assign to such person as may be approved of by His Majesty's principal Secretary of State for the War Department on behalf of His Majesty, all the benefit of the invention, and of any patent obtained or to be obtained for the same; and the person so approved of by the said Secretary of State may be a party to the assignment.

(2) The assignment shall effectually vest the benefit of the invention and patent in the said Secretary of State for the time being on behalf of His Majesty, and all covenants and agreements therein contained for keeping the invention secret, and otherwise, shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by the said Secretary of State for the time being.

(3) Where any such assignment has been made to the person so approved of by the said Secretary of State as aforesaid, the said Secretary of State, or such person as aforesaid, may, at any time before the application for a patent for the invention, or before publication of the specification or specifications, certify to the Commissioner his opinion that, in the interest of the public service, the particulars of the invention, and of the manner in which it is to be performed, should be kept secret.

(4) If the said Secretary of State, or such person as aforesaid, so certifies the application, any specification or specifications with the drawings (if any), and any amendment of the specification or specifications, and any copies of such documents and drawings shall, instead of being left in the ordinary manner at the Patent Office, be delivered to the Commissioner in a packet sealed by authority of the said Secretary of State, or such person as aforesaid.

(5) Such packet shall, until the expiration of the term or extended term during which a patent for the invention may be in force, be kept sealed by the Commissioner, and shall not be opened save under the authority of an order of the said Secretary of State, or such person as aforesaid, or of the Attorney-General.

(6) Such sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by writing under the hand of the said Secretary of State, or such person as aforesaid, to receive the same, and shall, if returned to the Commissioner, be again kept sealed by him.

(7) On the expiration of the term or extended term of the patent such sealed packet shall be delivered to any person authorised by writing under the hand of the Secretary of State, or such person as aforesaid, to receive it.

(8) Where the Secretary of State, or such person as aforesaid, certifies as before-mentioned after an application for a patent has been left at the Patent Office, but before the publication of the specification or specifications, the application, specification or specifications with the drawings (if any) shall be forthwith placed in a packet sealed by authority of the Commissioner, and such packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Secretary of State.

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which the Secretary of State, or such person as aforesaid, has certified as before-mentioned.

(10) No copy of any specification or other document or drawing by this section required to be placed in a sealed packet shall, in any manner whatever, be published or open to the inspection of the public, but, save as in this section otherwise directed, the provisions of this Proclamation shall apply in respect of any such invention and patent as aforesaid.

(11) The Secretary of State, or such person as aforesaid, may at any time by writing under his hand waive the benefit of this section with respect to any particular invention, and the specifications, documents, and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State, or to such person as aforesaid, or to any person or persons authorised by the Secretary of State, or such person as aforesaid, to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

59. (1) After the first day of August, 1902, a person shall not be entitled to describe himself as a patent agent, whether by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless he is registered as a patent agent, in pursuance of this Proclamation, or any rules to be made hereunder.

(2) Provided that every person who proves to the satisfaction of the Attorney-General that, prior to the 11th day of October, 1899, he had been *bonâ fide* practising as a patent agent, shall be entitled to be registered as a patent agent in pursuance of this Proclamation.

(3) If any person knowingly describes himself as a patent agent in contravention of this section, he shall be liable to a fine not exceeding £50, to be imposed by a Court of Resident Magistrate.

60. This Proclamation shall extend to all letters patent granted before the commencement of this Proclamation (except as to fees which became due for renewals of such letters patent before the commencement of this Proclamation), and to all applications then pending, in substitution for such enactments as would have applied thereto if this Proclamation had not been issued. Provided always—

- (1) That any fees for renewals of patents granted prior to the commencement of this Proclamation which became due between the 11th day of July, 1899, and such commencement may be paid within six months of the commencement of this Proclamation, and such payments shall be deemed and taken to be made within the period prescribed by law.
- (2) That all applications for patents pending at the commencement of this Proclamation shall, save as hereinafter mentioned, be treated for the purposes of this Proclamation as if the same had been filed with the Commissioner on the day of the commencement of this Proclamation.
- (3) That any question of priority between any two or more applicants whose applications were pending at the commencement of this Proclamation shall be determined in accordance with the dates on which such applications were originally filed.

- (4) That, in the event of a patent being granted on any such application as aforesaid, the date of such patent shall be the date on which such application was originally filed. Provided always that the term limited for the duration of every patent granted on any such application shall be fourteen years, together with such period as is equivalent to the period between the date when any such application was filed and the commencement of this Proclamation.
- (5) That the use or publication of any invention in respect of which an application for a patent was pending at the commencement of this Proclamation, before the acceptance of such application or the complete specification in respect thereof, as the case may be, under this Proclamation, shall be without prejudice to the patent (if any) to be granted for the same; provided that such use or publication took place on or subsequent to the date on which such application was originally filed.
- (6) Applications for patents pending at the commencement of this Proclamation shall not include any applications which lapsed or became abandoned under the provisions of Law No. 10 of 1898, prior to the 11th day of July, 1899.
- (7) The renewal fees payable in respect of any patents granted prior to the coming into operation of Law No. 10 of 1898 shall be the renewal fees prescribed by Law No. 6 of 1887.

* 61. It shall be lawful for the Commissioner, with the consent of the Governor, from time to time to alter the forms in the Schedules to this Proclamation, and to make rules or prescribe forms subject to the provisions of this Proclamation for regulating the business of the Patent Office, the publication of advertisements, the licensing, suspension, and qualification of patent agents, and all other matters or things by this Proclamation placed under the direction or control of the Commissioner.

* Such rules were made and published under Government Notice 179 of 1902 (*Gazette*, 9th May, 1902, p. 624). For rules as to registration of patent agents, see Government Notice 1,280 of 1903 (*Gazette*, 6th Nov., 1903, p. 1165). See p. 161.

62. It shall be lawful for the Governor, during the absence from his office of the Commissioner through illness, leave, or absence on duty, to appoint some fit and proper person to act for and on behalf of such Commissioner, and the person so acting shall have and exercise all the powers, duties, and privileges conferred by this Proclamation on the Commissioner.

63. In and for the purposes of this Proclamation, unless the context otherwise requires:—

“Governor” means the officer for the time being administering the Government of the Transvaal.

“Court” means the High Court of the Transvaal, or the Witwatersrand District Court, as the case may be.

“Attorney-General” includes the Legal Adviser to the Transvaal Administration.

“Foreign country” means any country, Colony, or State other than this Colony, and whether a British possession or not.

“Patentee” means the person for the time being entitled to the benefit of a patent.

“Person” means and includes corporation.

“Legal representative” means the heirs or executors of any deceased person.

“Patent agent” means an agent for obtaining patents in this Colony.

64. This Proclamation may be cited as “The Patents Proclamation, 1902.”

SCHEDULE “A.”

.....(fill in name and address of the applicant or applicants) by profession.....hereby declare that.....in possession of an invention entitled (here insert title of invention) that the true and first inventor thereof, and that the same is not in use by any other person or persons to the best of.....knowledge and belief: And.....humbly pray that a patent be granted to.....for the said invention.

Dated this.....day of.....19.....

.....
(Signature of the applicant or applicants.)

SCHEDULE "B."

(TITLE OF INVENTION.)

.....(name and address of applicant or applicants) do hereby declare the nature of this invention to be as follows:—

.....(Short description.)

Dated this.....day of.....19.....

.....
(Signature of the applicant or applicants or their Attorneys or Patent Agents.)

SCHEDULE "C."

(TITLE OF INVENTION.)

.....(name and address) by profession.....
do hereby declare the nature of this invention and in what manner the same is to be performed to be particularly described and ascertained in and by the following statement.....(here insert full description of invention.) Having now particularly described and ascertained the nature of.....said invention and in what manner the same is to be performed.....declare that what.....claim is—

- | | |
|---------|--|
| 1. | } (Here state distinctly
the features of novelty
claimed.) |
| 2. | |
| 3. | |

Dated this.....day of.....19.....

.....
(Signature of the applicant or applicants or their Attorneys or Patent Agents.)

SCHEDULE "D."

I, ... (name and address)
hereby give notice of my intention to oppose the grant of a patent upon
application No. of.....applied for by.....upon the
ground

.....
(Signature of the objector.)

SCHEDULE "E."

EDWARD, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Emperor of India, Defender of the Faith, to all to whom these presents shall come, greeting:

WHEREAS, John Smith of.....by profession..... hath by his declaration represented unto us that he is in possession of an invention for (insert title of invention), that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief. And whereas the said inventor hath humbly prayed that we would be graciously pleased to grant unto him (hereinafter together with his heirs, executors, and assigns, or any of them, referred to as the said patentee) our Royal Letters Patent for the sole use and advantage of his said invention. And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention. And whereas we, being willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request: Know ye therefore that we of our especial grace, certain knowledge, and mere motion do by these presents, for us, our heirs, and successors, give and grant unto the said patentee our especial licence, full power, sole privilege and authority that the said patentee by himself, his agents, or licensees, and no others, may at all times hereafter during the term of years herein mentioned make, use, exercise, and sell the said invention within our Colony of the Transvaal in such manner as to him or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention during the term of fourteen years from the date hereunder written of these presents: And to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the said invention, we do by these presents, for us, our heirs, and successors, strictly command all our subjects whatsoever within our said Colony that they do not at any time during the continuance of the said term of fourteen years either directly or indirectly make use of or put in practice the said invention or any part of the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent, licence, or agreement of the said patentee in writing under his hand, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal Command, and of being answerable to the patentee according to law for his damages thereby occasioned: Provided that these our Letters Patent are on this condition—that if at any time during the said term it shall appear that this our grant is contrary to law or prejudicial or inconvenient to our subjects in general, or that the said invention is or has become liable to be revoked under the provisions of "The Patents Proclamation, 1902," or any of the grounds therein set forth, or if the said patentee shall not supply or cause to be supplied for our service all such articles of the said invention as may be required by the officers or Commissioners administering any department of our service in such manner, at such times and at and upon such reasonable prices and terms as shall be settled in manner for the time being by law provided, then and in any of the said cases these our Letters Patent and all privileges and advantages whatever hereby granted shall determine and become void, notwithstanding anything hereinbefore contained: Provided

also that nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted: And, lastly, we do by these presents, for us, our heirs, and successors, grant unto the said patentee that these our Letters Patent shall be construed in the most beneficial sense for the advantage of the said patentee. In witness whereof we have caused these our letters to be made patent, and to be sealed as of the.....day of.....one thousand nine hundred and.....

Seal of Patent Office.

SCHEDULE "F."

Letters Patent No. of.....for.....(Title of invention.)

It is hereby notified for general information that.....
.....(name and residence of inventor) has applied to me for leave to amend the specification of the above-mentioned invention by way of.....the particulars whereof are given hereunder.

I have decided that this application and all objections thereto shall be considered at my office on the.....day of the month of.....
19.....at.....o'clock, or as soon as possible thereafter; and I therefore call upon all persons who are interested in opposing the granting of this application to deposit at my office before the said date of hearing a statement in writing setting forth their objections, as otherwise they will be debarred from bringing such objections forward.

Dated this.....day of.....19.....

.....
Commissioner of Patents.

The alteration which I desire to make in.....is as follows:—

(The applicant shall here state clearly what he desires and his grounds therefor and sign the same.)

SCHEDULE "G."

Letters Patent No.....of.....for.....(Title of invention.)

It is hereby notified for general information that I have made a petition to His Excellency the Governor requesting an extension of the term of the above-mentioned Letters Patent, and that this petition has been referred to the.....Court for consideration.

The hearing of this petition has been fixed for the.....day of.....
19.....in the.....noon at.....o'clock, or as soon thereafter as the case can be heard.

All persons who are interested in opposing the granting of this request must deposit their objections in writing with the Registrar of the Court at least one month before the said date of hearing, as otherwise they will be debarred from bringing such objections forward.

Dated this.....day of.....19.....

.....
(Signature of applicant.)

SCHEDULE "H."

LIST OF FEES PAYABLE AT THE PATENT OFFICE ON AND IN CONNECTION WITH LETTERS PATENT.

	£	s.	d.	£	s.	d.
1. On application for provisional protection ...	1	0	0			
2. On filing complete specification ...	3	0	0			
or				4	0	0
3. On filing complete specification with first application ...				4	0	0
4. On appeal from Commissioner to Attorney-General. By appellant ...				3	0	0
5. On notice of opposition to grant of patent. By opponent ...				0	10	0
6. On hearing by Commissioner. By applicant and by opponent respectively ...				1	0	0
7. On appeal from Commissioner to the High Court of the Transvaal. By appellant ...				4	0	0

On application to amend Specification.

8. Up to sealing. By applicant ...	1	10	0
9. After sealing. By patentee ...	3	0	0
10. On notice of opposition to amendment. By opponent ...	0	10	0
11. On hearing by Commissioner. By applicant and by opponent respectively ...	1	0	0
12. On application to amend specification during action or proceeding. By patentee ...	3	0	0

On Certificate of Renewal.

13. Before the expiration of the third year from the date of the patent and in respect of the fourth year ...	2	0	0
14. Before the expiration of the fourth year from the date of the patent and in respect of the fifth year ...	2	10	0
15. Before the expiration of the fifth year from the date of the patent and in respect of the sixth year ...	3	0	0
16. Before the expiration of the sixth year from the date of the patent and in respect of the seventh year ...	3	10	0
17. Before the expiration of the seventh year from the date of the patent and in respect of the eighth year ...	4	0	0
18. Before the expiration of the eighth year from the date of the patent and in respect of the ninth year ...	4	10	0
19. Before the expiration of the ninth year from the date of the patent and in respect of the tenth year ...	5	0	0

	£	s.	d.
20. Before the expiration of the tenth year from the date of the patent and in respect of the eleventh year ...	5	10	0
21. Before the expiration of the eleventh year from the date of the patent and in respect of the twelfth year ...	6	0	0
22. Before the expiration of the twelfth year from the date of the patent and in respect of the thirteenth year ...	6	10	0
23. Before the expiration of the thirteenth year from the date of the patent and in respect of the fourteenth year ...	7	0	0

NOTE.—Any or all of the above payments for renewals may be made in one sum.

On Enlargement of the time for payment of Renewal Fees.

24. Not exceeding one month ...	1	0	0
25. Not exceeding two months ...	3	0	0
26. Not exceeding three months ...	5	0	0

Other Matters.

27. For every entry of a transfer, agreement, licence or extension of patent ...	0	10	0
28. For duplicate of letters patent, each ...	2	0	0
29. Search or inspection fee, for every quarter of an hour ...	0	1	0
30. For any certificate issued by the Commissioner ...	0	5	0
31. For copy of any specification or other document, per folio of 100 words ...	0	1	0
32. On request to Commissioner to correct a clerical error—up to sealing ...	0	5	0
Ditto after sealing ...	1	0	0
33. For altering address in register ...	0	5	0
34. For enlargement of time for acceptance of complete specification—			
Not exceeding one month ...	2	0	0
Not exceeding two months ...	4	0	0
Not exceeding three months ...	6	0	0

RULES AND REGULATIONS.

Published by Government Notice No. 191 of 1902.

By virtue of the provisions of "The Patents (Amendment) Proclamation, 1902," the Legal Adviser to the Transvaal Administration hereby makes the following rules:—

1. These rules shall come into operation from and immediately after the 20th day of May, 1902.

2. In the interpretation of these rules any words herein used, defined by "The Patents Proclamation, 1902," or "The Patents (Amendment) Proclamation, 1902," shall have the meanings thereby assigned to them respectively.

3. When any person intends to appeal to the Attorney-General from the decision of the Commissioner in any case in which such appeal is given by "The Patents Proclamation, 1902," he shall, within one month from the date of the decision appealed against, file in the Patent Office a notice of such his intention.

4. Such notice shall state the nature of the decision appealed against, and whether the appeal is from the whole or part only, and, if so, what part of such decision, and shall be as far as possible in the form in the Schedule hereto. The proper revenue stamp denoting the fees prescribed by "The Patents Proclamation, 1902," shall be affixed to such form.

5. A copy of such notice of intention to appeal shall be sent by the party so intending to appeal to the Secretary to the Law Department, Pretoria; and when there has been an opposition before the Commissioner, to the opponent or opponents; and when the Commissioner has refused to seal a patent on the ground that a previous application for a patent for the same invention is pending, to the prior applicant.

6. Upon notice of appeal being filed the Commissioner shall forthwith transmit to the Secretary to the Law Department all the papers relating to the matter of the application in respect of which such appeal is made.

7. No appeal shall be entertained of which notice is not given within one month from the date of the decision appealed against, or such further time as the Commissioner may allow, except by special leave on application to the Attorney-General.

8. Seven days' notice at least of the time and place appointed for the hearing of any appeal shall be given by the Secretary to the Law Department, unless special leave be given by the Attorney-General that any shorter notice be given.

9. Such notice shall in all cases be given to the Commissioner and the applicant; and when there has been an opposition before the Commissioner, to the opponent or opponents; and when the

Commissioner has refused to seal a patent on the ground that an application for a patent for the same invention is pending, to the prior applicant.

10. The evidence used on appeal to the Attorney-General shall be the same as that used at the hearing before the Commissioner; and no further evidence shall be given save as to matters which have occurred or come to the knowledge of either party after the date of the decision appealed against, except with the leave of the Attorney-General upon application for that purpose.

11. The Attorney-General shall, at the request of either party, order the attendance at the hearing on appeal for the purpose of being cross-examined of any person who has made an affidavit in the matter to which the appeal relates, unless in the opinion of the Attorney-General there is good ground for not making such order.

12. Any person requiring the attendance of a witness for cross-examination shall tender to the witness whose attendance is required a reasonable sum for conduct money.

13. Where the Attorney-General orders that costs shall be paid by any party to another, he may fix the amount of such costs, and if he shall not think fit to fix the amount thereof he shall direct by whom, and in what manner, the amount of such costs shall be ascertained.

14. If any costs so ordered to be paid be not paid within fourteen days after the amount thereof has been so fixed or ascertained, or such shorter period as shall be directed by the Attorney-General, the party to whom such costs are to be paid may apply to the Attorney-General for an order for payment under the provisions of "The Patents (Amendment) Proclamation, 1902."

15. All documentary evidence required or allowed by the Attorney-General to be filed shall be subject to the same regulations in all respects as apply to the procedure before the Commissioner, and shall be filed in the Patent Office, unless the Attorney-General shall order to the contrary.

16. Any notice or other document required to be given to the Secretary to the Law Department under these Rules may be sent by a prepaid letter through the post.

FORM OF APPEAL TO ATTORNEY-GENERAL.

I (a)..... of (a).....
 hereby give notice of my intention to appeal to the Attorney-General
 from (b).....of the Commissioner of the.....
 day of.....19.....whereby he (c).....
 No. (d).....of the year 19.....(d).

Signature.....

Date.....

- (a) Here insert name and full address of appellant.
- (b) Here insert "the decision" or "that part of the decision" as the case may be.
- (c) Here insert particulars of the Commissioner's decision appealed against.
- (d) Insert number and year.

N.B.—This notice has to be sent to the Commissioner of Patents at the Patent Office, Pretoria, and a copy of same to the Secretary to the Law Department, Pretoria.

PART 3.—SPÉCIAL PROPERTY RIGHTS.

B.—TRADE MARKS.

PROCLAMATION No. 22, 1902.

1. Law No. 6 of 1892, and so much of any other Law as may be repugnant to, or inconsistent with, the provisions of this Proclamation, are hereby repealed; but no such repeal shall affect anything duly done, or any right or privilege acquired, or any liability, penalty, or forfeiture incurred in respect of any such Laws.

2. (1) The Commissioner of Patents, who shall also be the Registrar of Trade Marks, and is hereinafter referred to as the Registrar, may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark.

(2) The application must be made in the prescribed form and accompanied by the prescribed number of representations of the trade mark, and must state the particular goods or classes of goods in connection with which the applicant desires the trade mark to be registered.

(3) The Registrar may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Court, which shall, if required, hear the applicant and the Registrar, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(4) When an applicant for the registration of a trade mark is out of this Colony at the time of making the application, he shall give the Registrar an address for service in this Colony, and if he fails to do so the application shall not be proceeded with until the address has been given.

(5) Where registration of a trade mark has not been, or shall not be, completed within twelve months from the date of the application by reason of default on the part of the applicant, the application shall be deemed to be abandoned.

3. For the purposes of this Proclamation a trade mark must consist of or contain at least one of the following essential particulars :—

- (a) a name of an individual or firm printed, impressed, or woven in some particular and distinctive manner ; or
- (b) a written signature, or copy of a written signature, of the individual or firm applying for registration thereof as a trade mark ; or
- (c) a distinctive device, mark, brand, heading, label or ticket ; or
- (d) an invented word or invented words ; or
- (e) a word or words having no reference to the character or quality of the goods and not being a geographical name.

And there may be added to any one or more of these particulars any letters, words or figures, or combination of letters, words or figures, or any of them ; but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register. Provided as follows :—

- (1) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.
- (2) Any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade mark before Law No. 6 of 1892 came into operation, may be registered as such under this Proclamation.

4. A trade mark must be registered as belonging to particular goods or description of goods, and when registered shall be transferred and transmitted only in connection with the goodwill of the business concerned in such particular goods or description of goods, and shall be determinable with such goodwill, but subject as aforesaid application for registration of a trade mark shall be deemed to be equivalent to public use of such mark.

5. A trade mark may be registered in any colour or colours, and such registration shall, subject to the provisions of this Proclamation, confer on the registered owner the exclusive right to use the same in that or any other colour or colours.

6. Every application for registration of a trade mark under this Proclamation shall, as soon as may be after its receipt, be advertised by the Registrar, unless the Registrar refuse to entertain the application.

7. (1) Any person may, within one month, or such further period not exceeding three months as the Registrar may allow, of the advertisement of the application, give notice in duplicate at the Patent Office of opposition to registration of the trade mark, and the Registrar shall send one copy of such notice to the applicant.

(2) Within one month after the receipt of such notice, or such further time as the Registrar may allow, the applicant may send to the Registrar a counter-statement in duplicate of the grounds on which he relies for his application, and if he does not do so shall be deemed to have abandoned his application.

(3) If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the person who gave notice of opposition, and shall, after hearing the applicant and the opponent, if so required, decide whether the trade mark is to be registered, but his decision shall be subject to appeal to the Court, which shall hear the applicant and the opponent and the Registrar, and may make an order determining whether, and subject to what conditions (if any), registration is to be permitted.

(4) If the applicant abandons his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the Registrar may deem to be reasonable.

(5) Where the opponent is out of this Colony, he shall give the Registrar an address for service in this Colony.

(6) The Registrar shall have power to order that the costs of any proceeding under this section shall be paid by either party thereto, in all respects as if the Registrar were a Judge of the Court, and such costs shall be taxed by the Taxing Officer and paid, and the payment thereof may be enforced in the same manner as if the same were costs allowed by a Judge of the Court.

(7) In case the applicant or the opponent is residing abroad, or has no fixed property within this Colony, then the applicant or the opponent, prior to the hearing of the application or opposition, or any appeal, as the case may be, shall have the right to require that security to the satisfaction of the Registrar or the said Court, as the case may be, be lodged by the applicant or opponent for the costs, and if such security is not lodged or given, the application or opposition or appeal, as the case may be, shall not be taken into consideration by the Registrar or the said Court.

8. Where each of several persons claims to be registered as proprietor of the same trade mark, the Registrar may refuse to register any of them until their rights have been determined according to law, and the Registrar may himself submit or require the claimants to submit their rights to the Court.

9. The Registrar shall not, without the special leave of the Court, to be given in the prescribed manner, register in respect of the same goods or description of goods a trade mark identical with one which is already registered with respect to such goods or description of goods, and the Registrar shall not, without such leave as aforesaid, register with respect to the same goods or description of goods a trade mark having such resemblance to a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive. It shall not be lawful to register as part of, or in combination with, a trade mark, any words the use of which would, by reason of their being calculated to deceive, or otherwise, be deemed disentitled to protection in the Courts of Justice in England, or any scandalous designs.

10. From and after the first day of August, 1902, a person shall not be entitled to institute any proceedings to prevent or recover damages for the infringement of any trade mark capable of being registered under this Proclamation, until and unless such trade mark is registered in pursuance of this Proclamation, or unless it has been registered under the provisions of Law No. 6 of 1892 (*i.e.*, the former Trade Marks Law).

11. The registration of a person as first proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of such trade mark, and shall, after the expiration of five years from the date of such registration, be conclusive evidence of his right to the exclusive use of such trade mark, subject to the provisions of this Proclamation as to its connection with the goodwill of a business.

12. There shall be kept at the Patent Office a book called the Register of Trade Marks, wherein shall be entered the names and addresses of proprietors of registered trade marks, notifications of assignment and of transmissions of trade marks, and such other matters as may be from time to time prescribed, provided always that there shall not be entered on the register, or be receivable by the Registrar, any notice of any trust express implied or constructive.

13. Where a person becomes entitled by assignment, transmission, or other operation of law to a registered trade mark, the Registrar shall, on request and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the trade mark in the Register of Trade Marks. The person for the time being entered in the Register of Trade Marks as proprietor of a trade mark shall, subject to the provisions of this Proclamation, and to any rights appearing from such register to be vested in any other person, have power absolutely to assign or otherwise deal with the same, and to give effectual receipts for any consideration for such assignment or dealing.

14. The Register of Trade Marks kept under this Proclamation shall, at all convenient times, be open to the inspection of the public, subject to the provisions of this Proclamation, and to such regulations as may be prescribed, and certified copies, sealed with the seal of the Patent Office, of any entry in such register shall be given to any person requiring the same, on payment of the prescribed fee.

15. Printed or written copies, or extracts purporting to be certified by the Registrar and sealed with the seal of the Patent Office, of or from any documents in the Patent Office relating to trade marks, and of or from the Register of Trade Marks, or other books relating to trade marks kept there, shall be admitted in evidence in all Courts in this Colony, and in all proceedings, without further proof or production of the originals.

16. If the name of any person who is not, for the time being, entitled to the exclusive use of a trade mark in accordance with this Proclamation, or otherwise in accordance with law, is entered on the Register of Trade Marks as a proprietor of such trade mark, or if any mark is registered as a trade mark which is not authorised to be so registered under this Proclamation, any person aggrieved may apply in the prescribed manner for an order of Court that the register may be rectified, and the Court may either refuse such application, or it may, if satisfied with the justice of the case, make an order for the rectification of the register, and may award damages to the party aggrieved. The Court may, in any proceeding under this section, decide any question as to whether a mark is or is not such a trade mark as is authorised to be registered under this Proclamation; also any question relating to the right of any person who is a party to such proceeding to have his name entered on the Register of Trade Marks, or to have the name of some other person removed from such register; also any other question that it may be necessary or expedient to decide for the rectification of the register. Whenever any order has been made rectifying the register, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

17. The Registrar may, on request in writing accompanied by the prescribed fee—

- (a) correct any clerical error in, or in connection with, an application for registration of a trade mark; or
- (b) correct any clerical error in the name, style or address, or alter the address of the registered proprietor of a trade mark;
- (c) cancel the entry, or part of the entry, of a trade mark on the register; provided that the applicant accompanies his request by a declaration, on oath, made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark;
- (d) permit an applicant for registration of a trade mark to amend his application by omitting any particular goods, or classes of goods, in connection with which he has desired the trade mark to be registered;
- (e) correct any error in, or in connection with, an application for registration of a trade mark, or any registered trade mark, in any special circumstances not

provided for by the provisions of this Proclamation, upon such terms and upon such conditions as the Registrar may think fit.

18. (1) The registered proprietor of any registered trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Proclamation, and the Court may refuse or grant such leave on such terms as it may think fit.

(2) Notice of any intended application to the Court under this section shall be given to the Registrar by the applicant, and the Registrar shall be entitled to be heard on the application.

(3) If the Court grants leave, the Registrar shall, on proof thereof, and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

19. If any person makes, or causes to be made, a false entry in the Register of Trade Marks, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be liable to imprisonment for a term not exceeding two years, with or without hard labour.

20. (1) Any person who describes any trade mark applied to any article sold by him as registered, which is not so, shall be liable for every offence, on conviction before a Court of Resident Magistrate, to a fine not exceeding £100 sterling.

(2) A person shall be deemed for the purposes of this Proclamation to represent a trade mark as registered if he sells the article with the word "registered," or any word or words expressing or implying that registration has been obtained, stamped, engraved, or impressed on, or otherwise applied to, the article.

21. If anyone is unable, by reason of tender age or weakness of mind or other incapacity, to make a declaration, or perform an act required or permitted by this Proclamation, or by any rules made under it, then his guardians or curators, or, failing these, a person appointed by the Court, on the application of anyone on behalf of such person, or on the application of anyone interested in the making such declaration, or performing such act, may make such a declaration, or one as near as possible to the one prescribed,

or do such act in the name and on behalf of such aforesaid person. All acts done by such representative shall, for the purposes of this Proclamation, be as effectual as if done by the person so represented.

22. Where any discretionary power is by this Proclamation given to the Registrar, he shall not exercise that power adversely to the applicant for registration of a trade mark without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally, or by his agent.

23. The certificate of the Registrar as to any entry, matter, or thing, which he is authorised by this Proclamation, or any general rules made thereunder, to make or do, shall be *primâ facie* evidence of such entry having been made and of the contents thereof, and of such matters and things having been done or left undone.

24. (1) Any person who has applied for protection for any trade mark in a foreign country shall be entitled to registration of his trade mark under this Proclamation in priority to other applicants, provided that such application is made within six months from his applying for registration in such foreign country, and any such registration shall have the same date as the date of application in such foreign country.

(2) The use in this Colony, during the said period of six months, of the trade mark shall not invalidate the registration of the same.

(3) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Proclamation, provided that any trade mark, the registration of which has been duly applied for in the country of origin, may be the subject of an application for registration under this Proclamation.

(4) Nothing in this section contained shall entitle the proprietor of a trade mark to recover damages for infringements happening prior to the actual registration of his trade mark in this Colony.

25. The Registrar may, from time to time, with the consent of the Governor, make, and, when made, alter, annul, or vary such general rules as to the registry of trade marks, and as to notices

to be given by advertisement before the registration of trade marks, and as to the classification of goods for the purposes of this Proclamation, and as to the registration of first and subsequent proprietors of trade marks, and as to the removal from the register of any trade mark, as to notices and as to the persons entitled to inspect the register, and as to the proceedings to be taken to obtain the judgment or leave of the Court in any matter in which the judgment or leave of the Court is required to be obtained under this Proclamation, and generally for the purpose of carrying into effect this Proclamation, as he may deem expedient. Any rules made in pursuance of this section shall, on publication in the *Gazette*, have the force of law.

26. There shall be paid in respect of applications and registration, and other matters under this Proclamation, such fees as may be from time to time, with the consent of the Governor, prescribed by the Registrar, and such fees shall be levied and paid to the account of the Colonial Revenue in such manner as the Comptroller of the Treasury may from time to time direct.

27. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Proclamation, apply to the Attorney-General of the Transvaal Administration for directions in the matter.

28. For the purposes of this Proclamation—

“Prescribed” means prescribed by general rules made in pursuance of this Proclamation.

“Court” means the Supreme Court of the Transvaal.

“Foreign country” means any country, Colony, or State other than this Colony, and whether a British possession or not.

“Governor” means the officer for the time being administering the government of this Colony.

29. This Proclamation may be cited for all purposes as “The Trade Marks Registration Proclamation, 1902,” and shall be of force and effect from and after the first day of May, 1902.

RULES.

Promulgated by Government Notice No. 180 of 1902.

PRELIMINARY.

1. These Rules may be cited as the Trade Marks Rules, 1902, and shall come into operation from, and immediately after, the 20th day of May, 1902.

INTERPRETATION.

2. In the interpretation of these Rules any words herein used defined by the said Proclamation shall have the meanings thereby assigned to them respectively.

FEEs.

3. The fees to be paid in pursuance of the said Proclamation shall be the fees specified in the First Schedule hereto, and all such fees shall be payable in revenue stamps.

FORMS.

4. The forms in the Second Schedule to these Rules shall, as far as possible, be used in all cases to which they are respectively applicable. The proper revenue stamps denoting the prescribed fees shall, wherever possible, be affixed to such forms.

CLASSIFICATION OF GOODS.

5. For the purposes of trade marks registration and of these Rules goods are classified in the manner appearing in the Third Schedule hereto.

If any doubt arises as to what class any particular description of goods belongs to, the doubt shall be determined by the Registrar.

APPLICATION FOR REGISTRATION.

6. All applications for registration shall be addressed to the Patent Office, Trade Marks Branch, Law Courts, Pretoria.

7. An application for registration of a trade mark, if made by any firm or partnership, may be signed by some one or more members of such firm or partnership, as the case may be.

If the application be made by a body corporate, it may be signed by the secretary or other principal officer of such body corporate.

8. An application for registration and all other communications between the applicant and the Registrar may be made by or through an Attorney of the Court or patent agent resident, or carrying on business, in this Colony, and duly authorised to the satisfaction of the Registrar.

9. On receipt of the application the Registrar shall furnish the applicant with an acknowledgment thereof.

10. Where application is made to register a trade mark which was used by the applicant or predecessors in business before the 1st day of September, 1892, the application shall contain a statement of the time during which, and of the person by whom, it has been so used in respect of the goods mentioned in the application.

11. Subject to any other directions that may be given by the Registrar, all applications, notices, counter-statements, representations of marks, papers having representations affixed, or other documents required by the said Proclamation or by these Rules to be left with, or sent to, the Registrar shall be upon foolscap paper, and shall have on the left-hand part thereof a margin of not less than one inch and a half.

12. Every application for registration of a trade mark shall contain a representation of the mark affixed to the back of the application Form "A."

Where the representation is larger than the back of the application the representation shall be mounted upon linen, tracing cloth, or other material that the Registrar may consider suitable. Part of the mounting shall be affixed to the back, and the rest may be folded over.

There shall accompany every application for registration two additional representations of each mark exactly corresponding with that affixed to the back of the application in Form "A," and noted with all such particulars as may from time to time be required by the Registrar. Such particulars shall, if required, be signed by the applicant or his attorney or patent agent.

All representations of marks must be of a durable nature; the two additional representations shall be affixed to half-sheets of strong foolscap, and noted as aforesaid.

The Registrar, if dissatisfied with any representation of a mark, may at any time require another representation satisfactory to him to be substituted before proceeding with the application.

Where a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale, and in such form as the Registrar may think most convenient.

The Registrar may also, in exceptional cases, deposit in the Patent Office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

13. When a trade mark contains a word or words in other than Roman characters, there shall be endorsed on the application in Form "A," and on each of the accompanying representations, a sufficient transliteration and translation to the satisfaction of the Registrar of each of such words, and every such endorsement shall be signed by the applicant or his attorney or patent agent.

Where a trade mark contains a word or words in a language other than English, the Registrar may ask for an exact translation thereof, and, if he so requires, such translation shall be endorsed and signed as aforesaid.

EXERCISE OF DISCRETIONARY POWERS.

14. Before exercising any discretionary power given to the Registrar by the said Proclamation adversely to the applicant for registration of a trade mark, the Registrar shall (if so required by the applicant within one month from the date of the Registrar's objection) give the applicant an opportunity of being heard personally, or by his agent, by sending the applicant twenty-one days' notice of a time when he may be so heard.

15. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant shall notify to the Registrar whether or not he intends to be heard upon the matter.

16. The decision of the Registrar in the exercise of any such discretionary power as aforesaid shall be notified to the applicant.

17. The term "applicant" in the above Rules 14, 15 and 16 shall include each of several persons claiming to be registered as proprietor of the same trade mark.

ADVERTISEMENT OF APPLICATION.

18. Every application shall be advertised by the Registrar at the expense of the applicant in the *Government Gazette*, and if the Registrar shall think fit, in such other newspaper or newspapers as he may from time to time, or in any particular case, prescribe, during such times and in such manner as the Registrar may direct, unless he refuse to entertain the application.

If no representation of the trade mark be inserted in the *Gazette*, or such other newspaper or newspapers as aforesaid, in connection with the advertisement of an application, the Registrar shall refer in such advertisement to the place or places where a specimen or representation of the trade mark is deposited for exhibition.

19. For the purposes of such advertisements the applicant may be required to furnish a wood block or electrotype (or more than one if necessary) of the trade mark of such dimensions as may from time to time be directed by the Registrar, or with such other information or means of advertising the trade mark as may be required by the Registrar; and the Registrar, if dissatisfied with the block or electrotype furnished by the applicant, or his agent, may require a fresh block or electrotype before proceeding with the advertisement.

OPPOSITION TO REGISTRATION.

20. (1) A notice of opposition to the registration of a trade mark shall state the ground or grounds on which the opponent intends to oppose the registration, and be signed by him or by his attorney or patent agent, and shall also contain an address for service in this Colony, and shall be in the Form "B" in the Second Schedule to these Rules, with such variations as circumstances may require.

(2) Where the ground, or one of the grounds, of opposition, is that the applicant is applying for the registration of a trade mark identical with one already on the register with respect to the same goods or description of goods, or having such resemblance to a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive, the notice shall state the date of registration and the number on the register of such trade mark already on the register.

(3) Within two months after the expiration of one month, or such further time not exceeding three months from such expiration, as the Registrar may allow, from the date of the advertisement

of the application, the opponent shall leave at the Patent Office, Trade Marks Branch, such evidence by way of affidavit as he may desire to adduce in support of his opposition, and deliver to the applicant copies thereof.

(4) Within one month from the delivery of the opponent's copies of his affidavits the applicant shall leave at the Patent Office, Trade Marks Branch, his evidence by way of affidavit in answer, and deliver to the opponent copies thereof, and within seven days from such delivery the opponent shall leave at the Patent Office, Trade Marks Branch, his evidence by way of affidavit in reply, and deliver to the applicant copies thereof.

Such last-mentioned evidence shall be confined to matters strictly in reply.

(5) No further evidence shall be left on either side, except by leave of the Registrar upon the written consent of the parties duly notified to him, or by special leave of the Registrar given on an application made to him.

(6) Either party making such application shall give notice thereof to the opposite party, who shall be entitled to oppose the application.

(7) On the completion of the evidence, or at such other time as he may see fit, the Registrar shall appoint a time for the hearing of the case, and shall give the parties at least ten days' notice of such appointment. If the applicant or opponent desires to be heard he must forthwith send the Registrar an application on Form "D." The Registrar may refuse to hear either party who has not sent such application for hearing. If neither party applies to be heard the Registrar shall decide the case, and notify his decision, to the parties.

(8) On the hearing of the case no opposition shall be allowed in respect of any ground not stated in the notice of opposition; and where the ground, or one of the grounds, of opposition is that registration is being applied for in respect of a trade mark identical with one already on the register with respect to the same goods or description of goods, or having such resemblance to a trade mark on the register in respect to such goods or description of goods as to be calculated to deceive, the opposition shall not be allowed upon such ground, unless the date of registration and the number on the register of the said trade mark already on the register have been duly specified in the notice of opposition.

(9) The decision of the Registrar in the case shall be notified to the parties.

APPEAL TO THE COURT.

21. When any person intends to appeal to the Court from a decision of the Registrar in any case in which an appeal is given by the said Proclamation, he shall, within six weeks from the date of the decision appealed against, leave at the Patent Office, Trade Marks Branch, a notice of such his intention.

22. Such notice shall be accompanied by a statement in writing of the grounds of appeal, and of the appellant's case in support thereof.

23. A copy of the notice of intention to appeal, accompanied by a statement of the case, shall also be forthwith sent to the Registrar of the Supreme Court; and, where there has been an opposition before the Registrar, to the opponent or applicant, as the case may be.

24. Seven days' notice of the time appointed for the hearing of the appeal shall be given to the Registrar and to the appellant, and where there has been an opposition before the Registrar, to the opponent or applicant, as the case may be.

25. No appeal shall be entertained of which notice has not been given within one month from the date of the decision appealed against, or such further time as the Registrar may allow, except by special leave of the Court.

26. Subject to the directions of the Court, the evidence to be used on an appeal to the Court in the matter of an opposition shall be the same as that used at the hearing before the Registrar.

REGISTER OF TRADE MARKS.

27. As soon as may be after the expiration of one month from the date of the advertisement of the application, the Registrar shall, subject to opposition to the application and the determination thereof, if he is satisfied that the applicant is entitled to registration, and on payment of the prescribed fee, enter the name, address, and description of the applicant in the Register of Trade Marks as the registered proprietor of the trade mark in respect of the particular goods or classes of goods described in his application.

28. In the case of the death of any applicant for a trade mark after the date of his application, and before the trade mark applied for has been entered on the register, the Registrar, after the expiration of the prescribed period of advertisement, may, on being satisfied of the applicant's death, enter on the register, in place of the name of such deceased, the name, address, and description of the person owning the goodwill of the business, if such ownership be proved to the satisfaction of the Registrar.

29. The Registrar shall, on payment of the prescribed fee, issue to the applicant a certificate of the registration of his trade mark as nearly as possible in the Form "E."

30. Where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, a request for the entry of his name in the register as proprietor of the trade mark as nearly as possible in the Form "F" shall be addressed to the Registrar, and left at the Patent Office, Trade Marks Branch.

31. Such request shall, in the case of an individual, be made and signed by the person requiring to be registered as proprietor, and in the case of a firm or partnership by some one or more members of such firm or partnership, or in either case by his or their agent respectively duly authorised to the satisfaction of the Registrar, and in the case of a body corporate by their agent, authorised in like manner.

32. Every such request shall state the name, address and description of the person, claiming to be entitled to the trade mark (hereinafter called the claimant) and the particulars of the assignment, transmission, or other operation of law, by virtue of which he requires to be entered in the register as proprietor, so as to show the manner in which, and the person or persons to whom, the trade mark has been assigned or transmitted, and so as to show further that it has been so assigned or transmitted in connection with the goodwill of the business concerned in the particular goods or classes of goods for which the trade mark has been registered.

33. Every such request shall be accompanied by an affidavit to be thereunder written, verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the trade mark as claimed by such request.

34. The claimant shall furnish to the Registrar such other proof of title, and of the existence and ownership of such goodwill as aforesaid, as he may require for his satisfaction.

35. A body corporate may be registered as proprietor by its corporate name.

36. The Registrar may, before exercising the discretion vested in him by § 8 of the said Proclamation, require any or either of the persons claiming to be registered as proprietors of the same trade mark, to submit a statement in writing within a time to be notified by him, or to attend before him and make oral explanations with respect to such matters as the Registrar may require.

37. Where each of several persons claims to be registered as proprietor of the same trade mark, and the Registrar refuses to register any of them until their rights have been determined according to law, the manner in which the rights of such claimants may be submitted to the Court by the Registrar, or if the Registrar so require, by the claimants, shall, unless the Court otherwise order, be by motion to be proceeded with in the ordinary manner.

All applications to the Court under §§ 9, 16, or 18 of the said Proclamation shall also be by motion to be proceeded with in the ordinary manner.

38. Where an order has been made by the Court in either of the following cases, viz. :—

- (a) allowing an appeal under § 2 of the said Proclamation; or
- (b) disallowing an opposition to registration under § 7; or
- (c) under the provisions of §§ 9, 16, or 18 of the said Proclamation, the person in whose favour such order has been made, or such one of them, if more than one, as the Registrar may direct, shall forthwith leave at the Patent Office, Trade Marks Branch, an office copy of such order.

The register shall thereupon be rectified or altered, or the purport of such order shall otherwise be duly entered in the register, as the case may be.

39. If the registered proprietor of a trade mark send to the Registrar, together with the prescribed fee, notice of an alteration in his address, the Registrar shall alter the register accordingly.

40. Four clear days' notice of every application to the Court under § 16 of the said Proclamation, for rectification of the register, shall be given to the Registrar.

41. Whenever an order is made by the Court for making, expunging, or varying an entry from or in the register, the Registrar shall, if he thinks that such rectification or variation should be made public, and at the expense of the person applying for the same, publish by advertisement or otherwise, and in such manner as he thinks just, the circumstances attending the rectification or variation in the register.

42. Whenever the registered proprietor of any trade mark intends to apply by the leave of the Court to add to or alter such trade mark under § 18 of the said Proclamation, the notice to be given to the Registrar shall be given fourteen days at least before such application. If leave be granted on such application, the applicant shall forthwith supply to the Registrar such a number of representations of the trade mark as altered as he may deem sufficient.

INSPECTION OF REGISTER.

43. The Register of Trade Marks shall be open to the inspection of the public on payment of the prescribed fee on every week day except Saturday, between the hours of ten and four, and on Saturdays between the hours of ten and one, except on the days and at the times following:—

- (a) All days observed as public holidays.
- (b) Days which may from time to time be notified by a placard posted in a conspicuous place at the Patent Office.
- (c) Times when the register is required for any purpose of official use.

POWER TO DISPENSE WITH EVIDENCE.

44. Where, under these Rules, any person is required to do an act or thing, or to sign any document, or to make any affidavit on behalf of himself or of any body corporate, or any document or any evidence is required to be produced to, or left with, the Registrar or at the Patent Office, and it is shown to the satisfaction of the Registrar that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or to

make such affidavit, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Registrar, upon the production of such evidence and subject to such terms as he may think fit, to dispense with any such act or thing, document, affidavit or evidence.

AMENDMENTS.

45. Any document or drawing, or other representation of a trade mark for the amending of which no special provision is made by the said Proclamation may be amended, and any irregularity in procedure which, in the opinion of the Registrar, may be obviated without detriment to the interests of any person may be corrected if the Registrar thinks fit, and on such terms as he may direct.

ENLARGEMENT OF TIME.

46. The time prescribed by these Rules for doing any act, or taking any proceeding thereunder, may be enlarged by the Registrar if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms as he may direct.

CERTIFICATES.

47. The Registrar, when required to give a certificate as to an entry, matter, or thing, which he is authorised by the said Proclamation or any of these Rules to make or do, may, on receipt of a request in writing and on payment of the prescribed fee, give such certificate, but every certificate of registration shall have specified on the face thereof, whether the same is to be used in legal proceedings or for the purpose of obtaining registration in a foreign country, or for purposes other than use in legal proceedings or obtaining registration in a foreign country.

FIRST SCHEDULE.

FEES.

	£	s.	d.
1. On application to register a trade mark; for one or more articles included in one class	0	10	0
For one or more articles included in one class after the first	0	5	0
2. On simultaneous applications to register two or more trade marks in the name of the same proprietor. For the first mark	0	10	0
For every additional mark	0	5	0

3. For registration of a trade mark ; for one or more articles included in one class	£	s.	d.
For one or more articles included in one class after the first	2	0	0
4. For the registration of two or more trade marks applied for simultaneously in the name of the same proprietor. For the first mark	1	0	0
For every additional mark	2	0	0
5. On appeal from Registrar to Court—by appellant	1	0	0
6. On notice of opposition ; for each application opposed—by opponent	3	0	0
7. On hearing by Registrar—by applicant and by opponent respectively	1	0	0
8. On application to register a subsequent proprietor in cases of assignment or transmission ; the first mark	1	0	0
9. For every additional mark assigned or transmitted at the same time	0	5	0
10. For altering address on the register, for every mark	0	5	0
11. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged	0	10	0
12. For cancelling the entry or part of the entry of a trade mark upon the register on the application of the owner of such trade mark	0	5	0
13. On request to Registrar to correct a clerical error or permit amendment of application under § 17	0	5	0
14. For certificate of registration to be used in legal proceedings	1	0	0
15. For certificate of registration to be used for the purpose of obtaining registration in foreign countries	1	0	0
16. For certificate of Registrar under § 23 other than certificate of registration to be used in legal proceedings or for the purpose of obtaining registration in a foreign country	0	5	0
17. For copy of certificate of registration	0	2	0
18. For inspecting register, for every quarter of an hour	0	1	0
19. For office copy of documents, per every folio of 100 words or part of a folio	0	1	0
20. For certifying office copies, MS. or printed	0	2	6
21. For leave to make copies of documents ; in respect of each application or registered trade mark	0	2	6

SECOND SCHEDULE.

FORMS.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

A.

Application for Registration of Trade Mark.

You are hereby requested to register the accompanying trade mark in class..... in respect of (a) in the name of (b).....who claims to be the proprietor thereof (c).

The essential particulars of the trade mark are the following (d) and.....disclaim any right to the exclusive use of the added matter.

Signed (e).....

Address for Service.....

To the Registrar,

Patent Office, Trade Marks Branch, Pretoria.

- (a) Set out goods for which registration is required. If application is made for goods included in a different class the description of the goods in that class should be separately stated here.
- (b) Here insert legibly the full name, address, and description of the individual, firm or company. Add trading style (if any).
- (c) Alter to "claim to be proprietors thereof" in the case of a firm or company.
- (d) See § 2 of the Proclamation.
- (e) To be signed by the applicant or by his attorney or patent agent duly authorised.

Note.—One representation to be affixed at the back of this form and two others to be sent on separate half sheets of foolscap.

Representations of a large size may be folded, but must be mounted upon linen and affixed on the back hereof.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

B.

Notice of opposition to application for Registration.

(To be accompanied by an unstamped duplicate.)

In the matter of an application No.
..... by of

I (a).....hereby give notice of my intention to oppose the registration of the trade mark advertised under the above number for class.....in the *Gazette* of the.....day of.....19....., No.....

The grounds of opposition are as follows :—

(Signed).....

Dated the.....day of.....19.....

Address for Service.....

To the Registrar,

Patent Office, Trade Marks Branch, Pretoria.

- (a) Here insert full name and full address.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

C.*Form of Counter-statement.*

In the matter of an application No.
 and of the
 opposition thereto No.....

In reply to the notice of opposition in this matter by.....
of.....I give notice by
 way of counter-statement that I rely for my application on the follow-
 ing grounds:—

(To be dated and signed by the applicant or his attorney or patent
 agent.)

To the Registrar,

Patent Office, Trade Marks Branch, Pretoria.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

D.*Form of application for hearing by the Registrar in cases of
 opposition, etc.*

SIR,

I,.....of (a).....hereby apply to be heard
 in reference to.....and request that I may receive due notice
 of the day fixed for the hearing.

Sir,

Your obedient Servant,

To the Registrar,

Patent Office, Trade Marks Branch, Pretoria.

(a) Here insert full address.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

E.*Form of Certificate of Registration.*

Patent Office, Trade Marks Branch,

Pretoria,.....19.....

Certificate of Registration.

I, Registrar of Trade Marks, hereby certify that the trade mark
 No.....advertised in the *Gazette* No.....has been registered in the
 name of.....for.....in class.....
 and that such registration dates from the.....day of.....
 19.....

.....
 Registrar of Trade Marks.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

F.

Request to enter Name of Subsequent Proprietor of Trade Mark upon the Register, with Affidavit in support thereof.

I (a).....hereby request that you will enter.....name in the Register of Trade Marks as proprietor of the trade mark No.....in class.....

(b).....entitled to the said trade mark and to the goodwill of the business concerned in the goods with respect to which the said trade mark is registered.

(c)

And I do hereby make oath and say that the above several statements are true, and the particulars above set out comprise every material fact and document affecting the proprietorship of the said trade mark as above claimed.

(d)

Sworn at)
this day of..... 19.....)

Before me

(e)

To the Registrar,

Patent Office, Trade Marks Branch, Pretoria.

(a) Here insert name, full address and description.

(b) I am or We are.

(c) Here insert whether trade mark transmitted by death, marriage, insolvency or otherwise, and if entitled by assignment state the particulars thereof, as, e.g., "by deed dated the..... day of..... 19....."

(d) To be signed here by the person making the declaration.

(e) Signature and title of authority before whom the declaration is made.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

G.

Form of Notification of Registration of Subsequent Proprietor.

Patent Office, Trade Marks Branch,
Pretoria.....19.....

SIR,

I have to inform you that in pursuance of your application received at this office on the.....19....., your.....has been entered on the register as proprietor of the trade mark.

I am,

Your obedient servant,

.....
Registrar.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

H.*Notice of Application for Alteration of Address on Register of Trade Marks.*

In the matter of the trade mark No.
, registered in
 class.

SIR,

Notice is hereby given that I.....of.....the registered proprietor of the trade mark numbered as above, desire that my address on the Register of Trade Marks be altered to.....

Dated this.....day of.....19.....

(a)

The Registrar,

Patent Office, Trade Marks Branch, Pretoria.

(a) Signature of Proprietor.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

I.*Notice of Order of Court for Alteration or Rectification of Register of Trade Marks.*

In the matter of the trade mark No.
, registered in class.....in
 the name of.....

SIR,

Notice is hereby given that by order of the Court made on the.....day of.....19....., it was directed that the entry on the Register of Trade Marks in respect of the trade mark numbered as above should be rectified in the manner therein specified.

An office copy of the order of the Court is enclosed herewith.

Dated this.....day of..... 19.....

(a)

The Registrar,

Patent Office, Trade Marks Branch, Pretoria.

(a) To be signed by the person interested or his agent.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

J.*Form of Application by Proprietor of Registered Trade Mark
to Cancel Entry on Register.*

Trade mark No. class..... advertised in the *Government Gazette* No..... dated the.....

Name of registered proprietor or firm.....
Place of business
I, the undersigned.....of.....
(or I, the undersigned, a member of the firm of.....
of.....on behalf of my said firm) apply that
the entry upon the Register of Trade Marks in class.....of the
trade mark No.....may be cancelled.

The.....day of.....19.....

(Signed).....

This is the statement marked "....." referred to in the
affidavit of.....sworn before me the.....
of.....19.....

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

K.*Form of Affidavit in Support of Application for Cancellation
of Trade Mark by Owner.*

I,.....of..... (or I,..... a
member of the firm of.....of.....) do
hereby make oath and say as follows:—

(1) The application signed by me, and dated the.....day of
.....19....., and marked with the letter "....." and
shown to me at the time of making this affidavit, is true.

(2) I am the person whose name appears on the Register of Trade
Marks as the proprietor of the trade mark referred to in the said
application marked with the letter "....." (or my said firm is the
proprietor of the trade mark referred to in the said application marked
with the letter ".....").

(Signed).....

Sworn at }
this.....day of 19..... }

Before me, ...

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

L.*Request for Certificate of Registration of Trade Mark for use in obtaining Registration Abroad.*

In the matter of the trade mark
No., registered in class.....
in the name of.....

SIR,

I, ..., of.....
the registered proprietor of the above trade mark, hereby request you
to furnish me with your certificate of registration for use in obtaining
registration of the same in (a).....

(b)

Dated this.....day of.....19.....

The Registrar,

Patent Office, Trade Marks Branch, Pretoria.

(a) Here state name of country in which registration is to be sought.

(b) Signature.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

M.*Request for Certificate of Registration of Trade Mark to be used in Legal Proceedings.*

In the matter of the trade mark
No., registered in class.....
in the name of.....

SIR,

I, ..., of.....
the registered proprietor of the above trade mark, hereby request you to
furnish me with your certificate of registration to be used in legal pro-
ceedings.

(a)

Dated this.....day of.....19.....

The Registrar,

Patent Office, Trade Marks Branch, Pretoria.

(a) Signature.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

N.

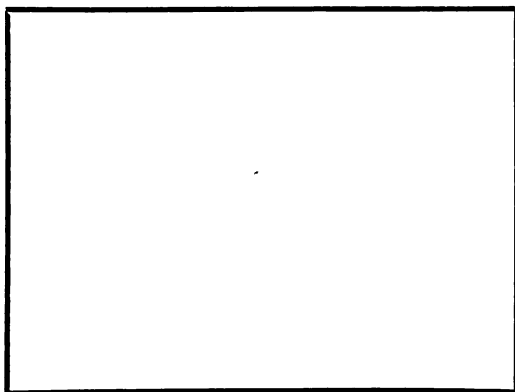
Form of Certificate of Registration granted to Original Proprietor for use in Legal Proceedings or in applying for Registration in Foreign Countries.

Certificate of Registration.

In the matter of legal proceedings
(or in the matter of an application to
register the trade mark No.
of A. B. in Cape Colony).

I, ..., Registrar of Trade Marks, hereby certify that
A. B. of is entered on the Register of Trade Marks as
proprietor of the trade mark No. in class in respect of
..... for the registration of which application was made on
the day of 19..... The user claimed for
the said trade mark is (one year before the 1st day of September,
1892). (a)

A representation of the said trade mark is shown hereunder (or
annexed hereto).

Representation of Trade Mark.

Witness my hand and seal this day of 19.....

.....

Registrar.

Patent Office, Trade Marks Branch, Pretoria.

(a) No mention is made of user unless this was prior to the 1st of
September, 1892.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

O.

Form of Certificate of Registration granted to Subsequent Proprietor for use in Legal Proceedings or in applying for Registration in Foreign Countries.

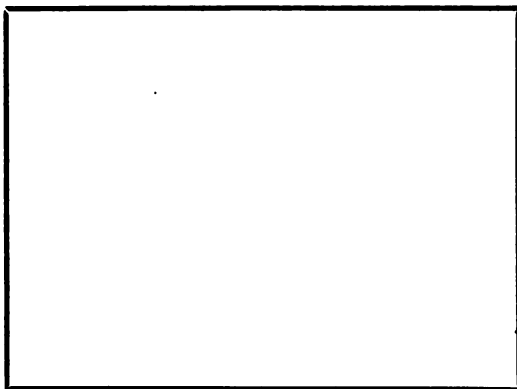
Certificate of Registration.

In the matter of legal proceedings
(or in the matter of an application
to register the trade mark No.
of A. B. & Co. in Cape Colony).

I, ..., Registrar of Trade Marks, hereby certify that under date the day of 19....., A. B. & Co. of are entered on the Register of Trade Marks as proprietors of the trade mark No. in class in respect of in succession to A. B. of in whose name the said trade mark was registered in the same class, and in respect of the same goods, under date the day of 19.....

The user claimed for the said trade mark is (one year before the 1st day of September, 1892). (a)

A representation of the said trade mark is shown hereunder (or is annexed hereto).

Representation of Trade Mark.

Witness my hand and seal this day of 19.....

.....
Registrar.

Patent Office, Trade Marks Branch, Pretoria.

(a) No mention is made of user unless this was prior to the 1st September, 1892.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

P.

Request for General Certificate of Registrar (other than Certificate for use in Legal Proceedings or for use in obtaining Registration Abroad).

In the matter of the trade mark
No. in class.....

SIR,

I, ...,
of.....hereby request you to
furnish me with your certificate that (a).....
(b).....

Dated this.....day of.....19.....

The Registrar,
Patent Office, Trade Marks Branch, Pretoria.

(a) Here set out the particulars which the Registrar is requested
to certify

(b) Signature.

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

Q.

General Certificate of Registrar (other than Certificate for use in Legal Proceedings or for use in obtaining Registration Abroad).

Patent Office, Trade Marks Branch,
Pretoria,.....19.....

I, ...,
Registrar of Trade Marks, hereby certify.....

THE TRADE MARKS REGISTRATION PROCLAMATION, 1902.

R.

Request for Copy of Official Notification of Registration of Trade Mark.

In the matter of the trade mark
No. registered in
class.....

SIR,

I, ..., of
the registered proprietor of the trade mark above named, hereby request
that you will furnish me with a copy of the official notification of the
registration of the same.

(a)

Dated this.....day of.....19.....

The Registrar,
Patent Office, Trade Marks Branch, Pretoria.

(a) Signature.

THIRD SCHEDULE.**GENERAL NOTE.**

Any wares made of mixed materials (for example, of both cotton and silk) shall be included in such one of the classes appropriated to those materials as the Registrar may desire.

CLASSIFICATION OF GOODS.**ILLUSTRATIONS.**

Note.—Goods are mentioned in this column by way of illustration, and not as an exhaustive list of the contents of a class.

Class 1.—Chemical substances used in manufactures, photography, or philosophical research, and anti-corrosives, such as acids (including vegetable acids), alkalis, artists' colours, mineral dyes.

Class 2.—Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes, such as artificial manure, cattle medicines, deodorisers, vermin destroyers.

Class 3.—Chemical substances prepared for use in medicine and pharmacy, such as cod liver oil, medicated articles, patent medicines, plasters, rhubarb.

Class 4.—Raw or partly prepared vegetable, animal and mineral substances used in manufactures, not included in other classes, such as resins, oils used in manufactures and not included in other classes, dyes (other than mineral), tanning substances, fibrous substances (*e.g.*, cotton, hemp, flax, jute), wool, silk, bristles, hair, feathers, cork, seeds, coal, coke, bone, sponge.

Class 5.—Unwrought and partly wrought metals used in manufactures, such as iron and steel (pig or cast), iron (rough), iron (bar and rail, including rails for railways), iron (bolt and rod), iron (sheet and boiler, and armour plates), iron (hoop), lead (pig), lead (rolled), lead (sheet), wire, copper, zinc, gold (in ingots).

Class 6.—Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines included in class 7, such as steam engines, boilers, pneumatic machines, hydraulic machines, locomotives, sewing machines, weighing machines, machine tools, mining machinery, fire engines.

Class 7.—Agricultural and horticultural machinery, and parts of such machinery, such as ploughs, drilling machines, reaping machines, thrashing machines, churns, cider presses, chaff cutters.

Class 8.—Philosophical instruments, scientific instruments, and apparatus for useful purposes, instruments and apparatus for teaching, such as mathematical instruments, gauges, logs, spectacles, educational appliances.

Class 9.—Musical instruments.

Class 10.—Horological instruments.

Class 11.—Instruments, apparatus, and contrivances, not medicated, for surgical or curative purposes, or in relation to the health of men or animals, such as bandages, friction gloves, lancets, fleams, enemas.

Class 12.—Cutlery and edge tools, such as knives, forks, scissors, shears, files, saws.

Class 13.—Metal goods not included in other classes, such as anvils, keys, basins (metal), needles, hoes, shovels, corkscrews.

Class 14.—Goods of precious metals (including aluminium, nickel, Britannia metal, etc.), and jewellery, and imitations of such goods and jewellery, such as plate (clock cases and pencil cases of such metals), plated goods, gilt and ormolu work.

Class 15.—Glass, such as window and plate glass, painted glass, glass mosaic, glass beads.

Class 16.—Porcelain and earthenware, such as china, stoneware, terra cotta, statuary porcelain, tiles, bricks.

Class 17.—Manufactures from mineral and other substances for building or decoration, such as cement, plaster, imitation marble, asphalt.

Class 18.—Engineering, architectural, and building contrivances, such as diving apparatus, warming apparatus, ventilating apparatus, filtering apparatus, lighting contrivances, draining contrivances, electric and pneumatic bells.

Class 19.—Arms, ammunition, and stores not included in class 20, such as cannon, small arms, fowling pieces, swords, shot and other projectiles, camp equipage, equipments.

Class 20.—Explosive substances, such as gunpowder, gun cotton, dynamite, fog-signals, percussion caps, fireworks, cartridges.

Class 21.—Naval architectural contrivances and naval equipments not included in classes 19 and 20, such as boats, anchors, chain cables, rigging.

Class 22.—Carriages, such as railway carriages, wagons, railway trucks, bicycles, bath chairs.

Class 23.—(a) Cotton yarn, and sewing cotton not on spools or reels; (b) Sewing cotton on spools or reels.

Class 24.—Cotton piece goods of all kinds, such as cotton shirtings, long cloth.

Class 25.—Cotton goods not included in class 23, 24, or 38, such as cotton lace, cotton braids, cotton tapes.

Class 26.—Linen and hemp yarn and thread.

Class 27.—Linen and hemp piece goods.

Class 28.—Linen and hemp goods not included in classes 26, 27, and 50.

Class 29.—Jute yarns and tissues, and other articles made of jute not included in class 50.

Class 30.—Silk, spun, thrown, or sewing.

Class 31.—Silk piece goods.

Class 32.—Other silks not included in classes 30 and 31.

Class 33.—Yarns of wool, worsted, or hair.

Class 34.—Cloths and stuffs of wool, worsted or hair.

Class 35.—Woollen and worsted and hair goods not included in classes 33 and 34.

Class 36.—Carpets, floor cloth, and oil cloth, such as drugget, mats and matting, rugs.

Class 37.—Leather, skins unwrought and wrought, and articles made of leather not included in other classes, such as saddlery, harness, whips, portmanteaux, furs.

Class 38.—Articles of clothing, such as hats of all kinds, caps and bonnets, hosiery, gloves, boots and shoes, other ready-made clothing.

Class 39.—Paper (except paper-hanging), stationery and book-binding, such as envelopes, sealing wax, pens (except gold pens), ink, playing cards, blotting cases, copying presses.

Class 40.—Goods manufactured from india rubber and gutta percha not included in other classes.

Class 41.—Furniture and upholstery, such as paper-hangings, papier, maché, mirrors, mattresses.

Class 42.—Substances used as food, or as ingredients in food, such as cereals, pulses, olive oil, hops, malt, dried fruits, tea, sago, salt, sugar, preserved meats, confectionery, oil cakes, pickles, vinegar, beer clarifiers.

Class 43.—Fermented liquors and spirits, such as beer, cider, wine, whisky, liqueurs.

Class 44.—Mineral and aerated waters, natural and artificial, including ginger-beer.

Class 45.—Tobacco, whether manufactured or unmanufactured.

Class 46.—Seeds for agricultural and horticultural purposes.

Class 47.—Candles, common soap, detergents, illuminating, heating, or lubricating oils, matches, and starch, blue, and other preparations for laundry purposes, such as washing powders, benzine collas.

Class 48.—Perfumery (including toilet articles, preparations for the teeth and hair, and perfumed soap).

Class 49.—Games of all kinds and sporting articles not included in other classes, such as billiard tables, roller skates, fishing nets and lines, toys.

Class 50.—Miscellaneous, including :—

(1) Goods manufactured from ivory, bone, or wood, not included in other classes.

(2) Goods manufactured from straw or grass, not included in other classes.

(3) Goods manufactured from animal and vegetable substances, not included in other classes.

(4) Tobacco pipes.

(5) Umbrellas, walking sticks, brushes and combs.

(6) Furniture cream, plate powder.

(7) Tarpaulins, tents, rick-cloths, rope, twine.

(8) Buttons of all kinds, other than of precious metal or imitations thereof.

(9) Packing and hose of all kinds.

(10) Goods not included in the foregoing classes.

PART 3.—SPECIAL PROPERTY RIGHTS.

C.—MERCHANDISE MARKS.

ORDINANCE No. 47 of 1903.

To make Provision against Fraudulent Marks on Merchandise.

1. (1) Every person who—

- (a) forges any trade mark; or
- (b) falsely applies to goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive; or
- (c) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or
- (d) applies any false trade description to goods; or
- (e) disposes of, or has in his possession, any die, block, machine, or other instrument for the purpose of forging a trade mark; or
- (f) manufactures, imports, or has in his possession, any labels for the purpose of applying them contrary to the provisions of this Ordinance; or
- (g) causes any of the things above in this section mentioned to be done;

shall, subject to the provisions of this Ordinance, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Ordinance.

(2) Every person who sells, or exposes for or has in his possession for sale, or any purpose of trade, or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

- (a) that, having taken all reasonable precautions against committing an offence against this Ordinance, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description; and
- (b) that, on demand made by or on behalf of the complainant, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or
- (c) that otherwise he had acted innocently;

be guilty of an offence against this Ordinance.

(3) Every person guilty of an offence against this Ordinance shall be liable on conviction—

- (a) to a fine not exceeding £200, or to imprisonment, with or without hard labour, for any period not exceeding two years, or to both such fine and such imprisonment; and
- (b) to forfeiture, at the discretion of the Court, of every article, instrument, or thing by means of, or in relation to, which the offence has been committed.

2. (1) For the purposes of this Ordinance—

The expression “trade mark” means a trade mark registered in the Register of Trade Marks, kept under Law No. 6 of 1892, or the Trade Marks Registration Proclamation, 1902, and includes any trade mark which, either with or without registration, is protected by law in the United Kingdom, or in any British Colony or Possession, or Foreign State, to which the provisions of § 103 of the Patents Designs and Trade Marks Act, 1883, enacted by the Imperial Parliament, are under Order-in-Council for the time being applicable. The said section is set forth in a Schedule to this Ordinance.

The expression "trade description" means any description, statement, or other indication direct or indirect—

- (a) as to the number, quantity, measure, gauge or weight of any goods; or
- (b) as to the place or country in which any goods were made or produced; or
- (c) as to the mode of manufacturing or producing any goods; or
- (d) as to the material of which any goods are composed; or
- (e) as to any goods being the subject of an existing patent, privilege, or copyright;

and the use of any figure, word or mark, which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Ordinance.

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Ordinance.

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise.

The expressions "person," "manufacturer, dealer, or trader" and "proprietor" include any body of persons corporate or incorporate.

The expression "name" includes any abbreviation of a name.

(2) The provisions of this Ordinance respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement, or combination thereof, whether including a trade mark or

not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this Ordinance respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person, applied in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means, as applied to any goods, any name or initials of a person which—

- (a) are not a trade mark or part of a trade mark; and
- (b) are identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorised the use of such name or initials; and
- (c) are either those of a fictitious person, or of some person not *bonâ fide* carrying on business in connection with such goods.

3. A person shall be deemed to forge a trade mark who either—

- (a) without the assent of the proprietor of the trade mark makes that trade mark, or a mark so nearly resembling that trade mark as to be calculated to deceive; or
- (b) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

and any trade mark or mark so made or falsified is in this Ordinance referred to as a forged trade mark; provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the accused.

4. (1) A person shall be deemed to apply a trade mark or mark or trade description to goods who—

- (a) applies it to goods themselves; or
- (b) applies it to any covering, label, reel, or other thing, in or with which the goods are sold, or exposed, or had in possession for any purpose of sale, trade, or manufacture; or
- (c) places, encloses, or annexes any goods which are sold, or exposed, or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or
- (d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

(2) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper; and the expression "label" includes any band or ticket. A trade mark or mark or trade description shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed or affixed to the goods, or to any covering, label, reel, or other thing.

(3) A person shall be deemed to falsely apply to goods a trade mark or mark, who, without the assent of the proprietor of a trade mark, applies such trade mark or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods, the burden of proving the assent of the proprietor shall lie on the accused.

5. Where a person is charged with making any die, block, machine or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

- (a) that, in the ordinary course of his business, he is employed on behalf of other persons to make dies, blocks, machines, or other instruments for making or being used in making trade marks, or, as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge

he was so employed by some person resident in this Colony, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

- (b) that he took reasonable precautions against committing the offence charged; and
- (c) that he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark or trade description; and
- (d) that he gave to the complainant all the information in his power with respect to the persons on whose behalf the die, block, machine, or other instrument was made, or the trade mark, mark or description was applied;

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the complainant, unless he has given due notice to him that he will rely on the above defence.

6. Where a watch-case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *prima facie* be deemed to be a description of that country, within the meaning of this Ordinance, and the provisions of this Ordinance with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch-case.

7. In any indictment, charge, pleading, proceeding or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description, and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

8. In any prosecution for an offence against this Ordinance, evidence of the port of shipment of imported goods shall be *prima facie* evidence of the place or country in which the goods were made or produced.

9. Any person who, being within this Colony, procures, counsels, aids, abets, or is accessory to the commission, without this Colony, of any act which, if committed in this Colony, would, under this Ordinance, be an offence, shall be guilty of that offence as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any place in this Colony in which he may be, as if the offence had been there committed.

10. (1) Where, upon information of an offence against this Ordinance, there has been issued in due form of law, either a summons requiring the person charged by such information to appear to answer to the same, or a warrant for the arrest of such person, and either the person issuing such summons or warrant, or any other officer of the law empowered to issue criminal process is satisfied, by information on oath, that there is reasonable cause to suspect that any goods or things, by means of, or in relation to, which such offence has been committed, are in any house or premises of the person charged or arrested, or otherwise in his possession or under his control in any place, the person issuing such summons or warrant, or other such officer as aforesaid, as the case may be, may issue a warrant under his hand, by virtue of which it shall be lawful for any police officer named or referred to in the warrant to enter such house, premises or place, at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before the Court of the Resident Magistrate having jurisdiction in respect of such offence, for the purpose of its being determined whether the same are, or are not, liable to forfeiture under this Ordinance.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Ordinance, is unknown, or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and the Resident Magistrate of the district in which such goods or things shall be found may cause notice to be advertised in the *Gazette*, stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Resident Magistrate, unless the owner or any person on his behalf, or other person interested in the goods or things, show cause to the contrary, may order such goods or things or any of them to be forfeited.

(3) Any goods or things forfeited under this section, or under any other provision of this Ordinance, may be destroyed or otherwise disposed of in such manner as the Court by which the same

are forfeited may direct, and the Court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

11. On any prosecution under this Ordinance the Court may order costs to be paid to the accused by the complainant, or to the complainant by the accused, having regard to the information given by, and the conduct of, the accused and complainant respectively.

12. No prosecution for an offence against this Ordinance shall be commenced after the expiration of three years next after the commission of the offence, or year next after the first discovery thereof by the complainant, whichever expiration first happens.

13. (1) All goods liable to forfeiture under this Ordinance, and also all goods of foreign manufacture bearing any name or trade mark being, or purporting to be, the name or trade mark of any manufacturer, dealer, or trader in this Colony, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into this Colony, and if any such goods as aforesaid shall be imported into this Colony contrary to the provisions hereof the same shall be forfeited.

(2) The words "goods of foreign manufacture" in the last preceding sub-section shall be taken to mean all goods manufactured, made, or produced at any place outside the limits of this Colony.

(3) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the officers of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with these regulations that the goods are such as are prohibited by this section to be imported.

(4) The Lieutenant-Governor may, by notice in the *Gazette*, from time to time, make, revoke, and vary regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions (if any) to be fulfilled before such detention and forfeiture, and may by such regulations determine the information,

notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(5) Where there is on any goods a name which is identical with, or a colourable imitation of the name of a place in this Colony, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in this Colony.

(6) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods, or offences in relation to such goods.

(7) The regulations may provide for the informant reimbursing the Director of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

14. On the sale, or in the contract for the sale of any goods, to which a trade mark or mark or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark, and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Ordinance, unless the contrary is expressed in some writing signed by or on behalf of the vendor, and delivered at the time of the sale or contract to, and accepted by, the vendee.

15. Where, at the promulgation of this Ordinance, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Ordinance with respect to false trade descriptions shall not apply to such trade description, when so applied; provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply, unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

16. (1) The provisions of this Ordinance shall not extend or apply to the following goods :—

- (a) goods imported into this Colony within three months after the taking effect of this Ordinance, where the offending trade mark, mark, or trade description shall have been applied to such goods or things prior to such importation ;
- (b) goods or things manufactured, prepared, or manipulated in this Colony before the promulgation of this Ordinance, where the offending trade mark, mark, or trade description shall have been applied prior to such promulgation ; provided always that the onus of proof as to the time of importation, manufacture, preparation, or manipulation, and as to the date of application of the offending trade mark, mark, or trade description, shall lie on the importer or owner of the goods or things.

(2) It shall be lawful for the Lieutenant-Governor, by Proclamation in the *Gazette*, at the request of the Government of any other Colony or Territory, to exempt, under such regulations as he may approve of, any goods or things imported directly into such Colony or Territory, while in transit through this Colony ; provided that goods or things so exempted shall, in case of re-importation into this Colony, become subject to the provisions of this Ordinance.

17. (1) This Ordinance shall not exempt any person from any action, suit or other proceeding which might, but for the provisions of this Ordinance, be brought against him.

(2) Nothing in this Ordinance shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Ordinance.

(3) Nothing in this Ordinance shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in this Colony, who *bonâ fide* acts in obedience to instructions of such master, and on demand made by or on behalf of the prosecutor has given full information as to his master.

18. Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the service of His Majesty, or any of the Royal Family, or of the Governor, Lieutenant-Governor, or any Government Department, shall be liable on summary conviction to a penalty not exceeding £20.

19. This Ordinance may be cited as The Merchandise Marks Ordinance, 1903.

SCHEDULE TO THE MERCHANDISE MARKS ORDINANCE, 1903.

*Being § 103 of Patents Designs and Trade Marks Act, 1883
(Imperial Parliament).*

If His Majesty is pleased to make any arrangement with the Government or Governments of any foreign State or States for mutual protection of inventions, designs and trade marks, or any of them, then any person who has applied for protection for any invention, design or trade mark in any such State, shall be entitled to a patent for his invention, or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the date of the protection obtained in such foreign State; provided that his application is made, in the case of a patent, within seven months, and in the case of a design or trade mark, within four months, from his applying for protection in the foreign State with which the arrangement is in force; provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

The publication in the United Kingdom, or the Isle of Man, during the respective periods aforesaid, of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention or the registration of the design or trade mark.

The application for the grant of a patent, or the registration of a design, or the registration of a trade mark, under this section, must be made in the same manner as an ordinary application under this Act; provided that, in the case of trade marks, any trade mark, the registration of which has been duly applied for in the country of origin, may be registered under this Act.

The provisions of this section shall apply only in the case of those foreign States in respect to which His Majesty shall from time to time by Order-in-Council declare them to be applicable, and so long only in the case of each State as the Order-in-Council shall continue in force with respect to that State.

NOTES.

There appears to be only one decided case in the South African Courts under a statute relating to Merchandise Marks—in the Cape Supreme Court. In this case (*Colonial Government vs. Spence & Drury*, 11 J. 264), a decision was given on § 14 of the Cape Act, which is practically identical with § 14 of the Transvaal Ordinance. In this case, Spence & Drury, at East London, imported goods into the Cape Colony, described in the bill of entry as cases of cigar boxes. These cases contained the lids, sides, and labels necessary for making complete cigar boxes. They were imported through East London for the declared purpose of being forwarded to one Schaap, at Johannesburg. Certain of the pieces of wood, presumably intended as lids to the boxes, were branded with the words "Perla de Cuba" and "Habana," and the labels contained words on them in Spanish and French, such as "Tobaccos finos," "Fabrica de Tobaccos," and "El Diploma." There were no other words on the boxes indicating any place of manufacture of the goods, but the labels bore a mark indicating that they had been printed in Germany. The Cape Collector of Customs claimed that Spence & Drury had rendered themselves liable to a penalty of £100, and further claimed that the goods were liable to forfeiture. It was decided, firstly, that the words in question constituted a false trade description, and that the goods were liable to confiscation; and, secondly, that the fact that the boxes were consigned to a person in the South African Republic, and could not have been used in Cape Colony without re-importation, did not take them out of the operation of the Cape Merchandise Marks Act (which, as before stated, is practically identical with the Transvaal Ordinance).

PART 3.—SPECIAL PROPERTY RIGHTS.

D.—COPYRIGHT.

LAW No. 2, 1887.

Definition and scope of Copyright.

1. The right to publish writings, engravings, charts, musical works, plays, and oral lectures, by means of printing, as also the right to perform or exhibit dramatic-musical works and plays in public, shall belong exclusively to the author and those obtaining their rights from or through him.

Every performance or exhibition, to which access is once or oftener obtainable upon payment of a certain sum or any other valuable consideration, shall be deemed to be a performance or exhibition in public, even in cases where, in addition to such price or consideration for admission, a ballot is required.

2. The following shall be deemed to be and are placed on the same footing as authors :—

- (a) Those who undertake any of the works mentioned in Article 1, comprised of contributions from different collaborators.
- (b) Public institutions, associations, establishments and partnerships in respect of the works published by them.
- (c) Translators in respect of the translations made by them.

In the case of works comprised of contributions from different collaborators, each such collaborator shall moreover, in so far as no stipulation to the contrary exists, retain the copyright of that part which is contributed by him.

3. In the case of works published without mention of the author's name, or under an assumed name, the publisher, or, if his name does not appear on the title page, or in default thereof on the cover, the printer, shall be deemed to be the author until another person shall have made himself known as the person entitled thereto in the manner determined by Articles 10 and 11, save as to the term of filing as per Article 10.

4. Except in the special instances that may be determined on by the Government with advice and consent of the Executive Council, there shall not be any copyright of Laws, resolutions, Ordinances and whatsoever further orally or in writing is brought to the public notice by or on behalf of any public authority.

5. Copyright shall secure to an author the exclusive right to publish by means of printing translations of—

- (a) his works not yet published by means of printing, his oral lectures being included thereunder ;
- (b) his works already published by means of printing, provided that he has with the first issue on the title page, or in default thereof on the cover of the work, reserved to himself the sole right in respect of one or more specially mentioned languages, and within three years after the first issue shall have published or caused to be published his translation by means of printing.

In the case of works which consist of separate volumes or numbers, this term shall be reckoned to run separately in respect of each volume or number.

6. In the case of the issue of the same work at the same time in different languages, only one such issue shall be deemed to be the original work, and all the others shall be deemed to be translations.

The author shall be entitled to point out on the title page, or in default thereof on the cover, which issue he considers to be the original.

If he fail to do so, the issue which is in the mother language of the author shall be deemed to be the original work.

7. The copyright of works published by printing shall not operate to prevent quotations being made therefrom in other works for the purposes of announcements or reviews.

Provided the source from which they are derived is mentioned, it shall further be lawful to publish by means of printing reports and articles taken from daily, weekly, and monthly papers, except in cases where the copyright is specially reserved at the head of such report or article, and the further steps are taken in terms of Article 10.

8. The copyright of oral lectures shall not preclude the giving of a report of whatever has taken place at a public meeting.

9. The copyright shall be deemed to be movable property.

It may be wholly or in part ceded, and shall pass by way of succession to the author's heirs.

It cannot be taken in execution.

Conditions under which the Copyright in respect of works published by printing is to be exercised.

10. The copyright in respect of a work published by means of printing shall lapse if the author (or his assign), the publisher or printer, do not file with the Registrar of Deeds, within two months after the issue thereof, three copies of the work, all bearing the autograph of the author (or his assign), or the printer or publisher, mentioning his residence and the date of issue, due regard being had in so far as translations are concerned to the term mentioned in Art. 5 (b).

Upon lodging of the copies aforesaid, a sworn declaration made by the printer, to the effect that the "work" has been printed at his printing house in this Colony, shall be produced.

11. The Registrar of Deeds shall give the person filing the copies of the books a duly dated certificate of the receipt thereof.

Of these certificates duplicates shall be kept in his department in a register which each member of the public may inspect free of charge, and of which he may at his own cost obtain an extract or copy.

The form of certificate and register shall be determined by the Government.

A monthly statement of works and translations sent in shall be published in the *Staatscourant*.

12. The exclusive right to perform or exhibit dramatic-musical works or plays shall lapse as soon as these works are published by printing, unless the author in the original issue on the title page, or in default thereof on the cover, expressly reserves to himself this right.

Duration of Copyright.

13. The copyright of works published by means of printing shall last for fifty years after the first issue, to be reckoned from the date of certificate mentioned in Art. 11.

Should the author outlive this term, and not at any time have ceded his right to another, he shall retain his copyright during the term of his natural life.

This provision shall not apply in respect of the persons enumerated in paragraph 2, §§ (a) and (b).

14. The copyright of works not published by means of printing, oral lectures being included thereunder, shall last during the term of the natural life of the author, and for thirty years after his decease.

15. The exclusive right to perform or exhibit dramatic-musical works or plays shall last :—

1. In respect of works not published by means of printing, during the lifetime of the author and thirty years thereafter.
2. In respect of works published by means of printing, where such exclusive right was reserved, during a term of ten years reckoned from the date of the certificate referred to in Art. 11.

16. The exclusive right to publish translations of any work by means of printing shall last :—

1. In respect of works not already published by means of printing, oral lectures being included thereunder, for so long as the copyright exists.

2. In respect of works published by means of printing, during five years reckoned from the date of the certificate mentioned in Art. 11.

17. In the case of works consisting of different volumes of numbers, the term of the copyright shall be separately reckoned in respect of each volume or number.

Proceedings in vindication of the Copyright.

18. Any person who infringes the copyright of another, or who sells, imports, distributes, publicly offers for sale, or has in his possession for the purposes of selling, a work, whereby an infringement is made upon the copyright of another, shall be held liable in a civil action for damages to be instituted by the author or his assigns.

19. Authors or their assigns may seize copies of works which, in contravention of their exclusive right, are published by means of printing, and may claim that such copies be delivered to them or destroyed.

This right of taking possession shall, however, not be exercised in respect of a single copy of a work which may be in possession of a person who does not trade in such articles, and who has obtained such copy for his own use.

20. No copyright of any work published by means of printing before this Law shall have come into operation shall be exercised, unless the author (or his assign), publisher or printer, within six months after this Law shall have come into operation, shall lodge with the Registrar of Deeds three copies, all of them signed in original on the title page, or in default thereof on the cover, mentioning his dwelling-place and the date of the original publication.

The last-mentioned date shall, subject to proof to the contrary, be taken as the point from which the duration of the copyright is to be calculated.

A declaration as mentioned in the second paragraph of Art. 10 shall also in this case be sent in.

21. The Registrar of Deeds shall give the depositors a dated certificate of receipt.

A duplicate of such certificate shall be kept in his department in a register which each member of the public may inspect free of charge, and of which he may at his own charge obtain extracts or copies.

The Government shall determine the form of certificate and register.

A monthly statement shall be published in the *Staatscourant* of the declarations and works sent in, mentioning the date stated by the depositors to be the date of the original issue of the work sent in.

Concluding Provisions.

22. Of the three copies to be sent in to the Registrar of Deeds in terms of Arts. 10 and 20, one shall remain in his office and one shall be placed in the State Library.

The Government shall decide what is to be done with the third copy.

23. This Law shall come into operation three months after publication in the *Staatscourant*.

FIRST VOLKSRAAD RESOLUTION, 20th June, 1895.

420. Noted and accepted Second Volksraad's Resolution, dated. 1st June, 1895, Art. 298.

Said Resolution reads as follows:—

Art. 23 of this Law (Law No. 2, 1887) shall become Art. 24, and Art. 23 shall read as follows:—

The President shall have the right to confer by Proclamation all privileges granted under this Law on owners of copyright of books, writings, plates, maps, music, dramatic works, etc., published in any State or Colony and there printed, provided that all privileges in accordance with the law of copyright existing there are conferred by such State or Colony on owners of the copyright of books, writings, plates, maps, music, dramatic works, published and printed within this Republic. [This, in other words, provides for reciprocity.]

PART 3.—SPECIAL PROPERTY RIGHTS.

E.—BILLS OF EXCHANGE AND PROMISSORY NOTES.

PROCLAMATION No. 11, 1902.

PART I.

PRELIMINARY.

1. In this Proclamation, unless the context otherwise requires—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes a counter-claim, claim in reconvention and set-off.

“Banker” includes a body of persons, whether incorporated or not, who carry on the business of banking.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange; and

“Note” means promissory note.

“To note” is to make a notarial minute in accustomed form of the circumstances of dishonour and at the time of dishonour of a bill or note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

- “Holder” means the payee or endorsee of a bill or note who is in possession of it or the bearer thereof.
- “Endorsement” means an endorsement completed by delivery.
- “Issue” means the first delivery of a bill or note complete in form to a person who takes it as a holder.
- “Person” includes a body of persons, whether incorporated or not.
- “Value” means valuable consideration.
- “Written” includes printed; and
- “Writing” includes print.
- “Non-business days” include Sunday and any day appointed by any Law, or by the Lieutenant-Governor under the authority of any Law, as a solemn fast or day of thanksgiving, or as a public holiday.
- “Payment in due course” means payment made at or after the maturity of a bill to the holder thereof in good faith, and without notice that his title to the bill is defective.
- “Month” means calendar month.

PART II.

BILLS OF EXCHANGE.—FORM AND INTERPRETATION.

2. (1) A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a certain sum in money to, or to the order of, a specified person, or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section, but an unqualified order to pay, coupled with—

- (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount; or
- (b) a statement of the transaction which gives rise to the bill; or
- (c) a statement on the bill that it is drawn against specified documents attached thereto for delivery or acceptance, or on payment of the bill, as the case may be; or
- (d) a statement on the bill that it is drawn under or against a specified letter of credit or other similar authority;

is unconditional.

(4) A bill is not invalid by reason—

- (a) that it is not dated;
- (b) that it does not specify the value given, or that any value has been given therefor;
- (c) that it does not specify the place where it is drawn or the place where it is payable.

3. (1) A bill may be drawn payable to or to the order of the drawer; or it may be drawn payable to or to the order of the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument at his option either as a bill of exchange or as a promissory note.

4. (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees, whether they are partners or not, but an order addressed to drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange.

5. (1) Where a bill is not payable to bearer the payee must named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person, or a person not having capacity to contract, the bill may be treated as payable to bearer.

6. (1) When a bill contains words prohibiting transfer or indicating an intention that it should not be transferable it is valid as between the parties thereto, but is not negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last endorsement is an endorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by endorsement, is expressed to be payable to the order of a specified person and not to him or his order, it is nevertheless payable to him or his order at option.

7. (1) The sum payable by a bill is a sum certain within the meaning of this Proclamation, although it is required to be paid—

(a) with interest;

(b) by stated instalments;

(c) by stated instalments, with a provision that, upon default in payment of any instalment, the whole shall become due;

(d) according to an indicated rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

8. (1) A bill is payable on demand—

(a) which is expressed to be payable on demand or at sight, or on presentation; or

(b) in which no time for payment is expressed.

(2) Where a bill is accepted or endorsed when it is overdue it shall, as regards the acceptor who so accepts, or any endorser who so endorses it, be deemed a bill payable on demand.

9. A bill is payable at a determinable future time within the meaning of this Proclamation which is expressed to be payable—

(1) At a fixed period after date or sight.

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain. An instrument expressed to be payable on or after the occurrence of a specified event, which may or may not happen, is not a bill, and the happening of the event does not cure the defect.

10. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly; provided that—

(1) where the holder in good faith and by mistake inserts a wrong date; and

(2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course,

the bill shall not be voided thereby, but shall operate and be payable as if the date so inserted had been the true date.

11. (1) Where a bill or an acceptance or any endorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance or endorsement, as the case may be.

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

12. Where a bill is not payable on demand, the day on which it falls due is determined as follows :—

- (1) If the date on which any bill would fall due shall be a non-business day, the due date of the bill shall be the next business day.
- (2) There are no days of grace in this Colony. (This subsection only applies to bills of exchange and promissory notes drawn or made on and after April 15th, 1902.)
- (3) Where a bill is payable at a fixed period after date, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.
- (4) Where a bill is payable at a fixed period after sight the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance or for non-delivery.

13. The drawer of a bill or any endorser may insert therein the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may think fit.

14. The drawer of a bill and any endorser may insert therein an express stipulation—

- (1) Negating or limiting his own liability to the holder ;
- (2) Waiving as regards himself some or all of the holder's duties.

15. (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely :—

- (a) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.
- (b) It must not express that the drawee will perform his promise by any other means than the payment of money.

16. A bill may be accepted—

- (1) Before it has been signed by the drawer or while otherwise incomplete;
- (2) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment;
- (3) When a bill payable after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

17. (1) An acceptance is either—

(a) general; or (b) qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. In particular an acceptance is qualified which is—

- (a) Conditional: that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;
- (b) Partial: that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (c) Local: that is to say, an acceptance to pay only at a particular specified place.

An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere;

- (d) Qualified as to time;
- (e) The acceptance of some one or more of the drawees, but not of all.

18. (1) Where a simple signature on a blank paper to which a stamp has been affixed by the signer is delivered by him in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount; such stamp will cover using the signature for that of the drawer or the acceptor or an endorser; and in like manner when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument, when completed, may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within the time agreed on, or if no time be agreed on, then within a reasonable time, and strictly in accordance with the authority given. Reasonable time for the purpose is a question of fact:

Provided that if any such instrument, after completion, is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

19. (1) Every contract on a bill, whether it be the drawer's, the acceptor's or an endorser's, is incomplete and revocable until delivery of the instrument in order to give effect thereto:

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties and as regards a remote party other than a holder in due course, the delivery—

- (a) in order to be effectual, must be made either by or under the authority of the party drawing, accepting or endorsing, as the case may be;

- (b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill. But if the bill be in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as a drawer, acceptor or endorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

CAPACITY AND AUTHORITY OF PARTIES.

20. (1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract; provided that to the validity of a bill accepted or endorsed by a woman the renunciation of the benefits *senatus consultum velleianum* and *authentica si qua mulier* shall not be requisite.

(2) Where a bill is drawn or endorsed by an infant or minor or corporation having no capacity or power to incur liability on a bill, the drawing or endorsement entitles the holder to receive payment of the bill and to enforce it against any other party thereto.

21. No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such; provided that—

- (1) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name.
- (2) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners of that firm.

22. Subject to the provisions of this Proclamation, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill, or to give a discharge therefor, or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority; provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to forgery.

23. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

24. (1) Where a person signs a bill as drawer, endorser or acceptor and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; provided that if such person had no authority to sign for and on behalf of such principal or in a representative character he shall be personally liable on the said bill.

(2) In determining whether a signature on a bill is that of a principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

THE CONSIDERATION OF A BILL.

25. (1) Valuable consideration for a bill may be constituted by—

(a) any cause sufficient to support an action founded on contract or agreement;

(b) an antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it arising either from contract or by implication of law he is deemed to be a holder for value to the extent of the sum for which he has a lien.

26. (1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor or endorser without receiving value therefor, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

27. (1) A holder in due course is a holder who has taken a bill complete and regular on the face of it under the following conditions, namely:—

- (a) That he became the holder of it before it was overdue, and without notice that it had previously been dishonoured, if such was the fact.
- (b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Proclamation when he obtained the bill or the acceptance thereof by fraud or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to fraud.

(3) A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

28. (1) Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value.

(2) Every holder of a bill is *primâ facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud or illegality, the burden of proof is shifted unless and until the holder proves that subsequent to the alleged fraud or illegality value has in good faith been given for the bill.

NEGOTIATION OF BILLS.

29. (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the endorsement of the holder, completed by delivery.

(4) When the holder of a bill payable to his order transfers it for value without endorsing it the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the endorsement of the transferor.

(5) When any person is under obligation to endorse a bill in a representative capacity he may endorse the bill in such terms as to negative personal liability.

30. An endorsement in order to operate as a negotiation must comply with the following conditions, namely :—

- (1) It must be written on the bill itself and be signed by the endorser. The simple signature of the endorser on the bill without additional words is sufficient.

An endorsement written on the allonge or on a "copy" of a bill issued or negotiated in a country where copies are recognised is deemed to be written on the bill itself.

- (2) It must be an endorsement of the entire bill. A partial endorsement (that is to say, an endorsement which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the bill to two or more endorsees severally) does not operate as a negotiation of the bill.
- (3) Where a bill is payable to the order of two or more payees or endorsees who are not partners, all must endorse unless the one endorsing has authority to endorse for the others.
- (4) Where in a bill payable to order the payee or endorsee is wrongly designated or his name is mis-spelt, he shall endorse the bill as therein described, adding his proper signature.
- (5) Where there are two or more endorsements on a bill, each endorsement is deemed to have been made in the order in which it appears on the bill until the contrary is proved.
- (6) An endorsement may be made in blank or special. It may also contain terms making it restrictive.

31. Where a bill purports to be endorsed conditionally, the condition may be disregarded by the payer, and payment to the endorsee is valid whether the condition has been fulfilled or not.

32. (1) An endorsement in blank specifies no endorsee and a bill so endorsed becomes payable to bearer.

(2) A special endorsement specifies the person to whom or to whose order the bill is to be payable.

(3) The provisions of this Proclamation relating to a payee apply with the necessary modifications to an endorsee under a special endorsement.

(4) When a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing above the endorser's signature a direction to pay the bill to or to the order of himself or some other person.

33. (1) An endorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as for example, if a bill be endorsed "Pay D. only," or "Pay D. for the account of X." or "Pay D. or order for collection."

(2) A restrictive endorsement gives the endorsee the right to receive payment of the bill and to sue any party thereto that his endorser could have sued, but gives him no power to transfer his rights as endorsee unless it expressly authorise him to do so.

(3) Where a restrictive endorsement authorises further transfer, all subsequent endorsees take the bill with the same rights and subject to the same liabilities as the first endorsee under the restrictive endorsement.

34. (1) Where a bill is negotiable in its origin, it continues to be negotiable until it has been—

(a) restrictively endorsed; or

(b) discharged by payment or otherwise.

(2) Where an overdue bill is negotiated it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an endorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour: but nothing in this sub-section shall affect the rights of a holder in due course.

35. Where a bill is negotiated back to the drawer, or to a prior endorser, or to the acceptor, such party may, subject to the provisions of this Proclamation, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

36. The rights and powers of the holder of the bill are as follows:—

- (1) He may sue on the bill in his own name.
- (2) Where he is a holder in due course he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill.
- (3) Where the title is defective—
 - (a) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and
 - (b) if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

GENERAL DUTIES OF THE HOLDER.

37. (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and endorsers.

38. (1) Subject to the provisions of this Proclamation, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2) If he do not do so the drawer and all endorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills and the facts of the particular case.

39. (1) A bill is duly presented for acceptance which is presented in accordance with the following rules:—

(a) The presentment must be made by or on behalf of the holder to the drawee, or to some person authorised to accept or refuse acceptance on his behalf, at a reasonable hour on a business day, and before the bill is overdue.

(b) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all unless one has authority to accept for all, then presentment may be made to him only.

(c) Where the drawee is dead presentment may be made to his executor.

- (d) Where the drawee is insolvent or has assigned his estate, presentment may be made to him or his trustee or assignee.
 - (e) A presentment through the post office, if in due course, is sufficient.
- (2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—
- (a) where the drawee is dead, or insolvent, or is a fictitious person, or a person not having capacity to contract by bill;
 - (b) where, after the exercise of reasonable diligence, such presentment cannot be effected;
 - (c) where, although the presentment has been irregular, acceptance has been refused on some other ground.
- (3) The fact that the holder has reason to believe that the bill on presentment will be dishonoured does not excuse presentment.

40. When a bill is duly presented for acceptance and it is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and endorsers.

41. (1) A bill is dishonoured by non-acceptance—

- (a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Proclamation is refused or cannot be obtained; or
- (b) when presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Proclamation, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentment for payment is necessary.

42. (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken and the drawer or an endorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or endorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance whereof due notice has been given. Where a bill has been accepted as to part, it must be protested as to the balance.

(3) When a drawer or endorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

43. Subject to the provisions of this Proclamation, a bill must be duly presented for payment. If it be not so presented, the drawer and endorsers shall be discharged. A bill is duly presented for payment which is presented in accordance with the following rules:—

- (1) Where the bill is not payable on demand, presentment must be made on the day it falls due.
- (2) Where the bill is payable on demand, then subject to the provisions of this Proclamation presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its endorsement in order to render an endorser liable. In determining what is a reasonable time regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.
- (3) Presentment must be made by the holder, or by some person authorised to receive payment on his behalf, at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer or to some person authorised to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person can there be found.
- (4) A bill is presented at the proper place—
 - (a) where a place of payment is specified in the bill and the bill is there presented;

- (b) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill and the bill is there presented;
- (c) where no place of payment is specified, and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not at his ordinary residence if known;
- (d) in any other case, if presented to the drawee or acceptor whenever he can be found, or if presented at his last known place of business or residence.
- (5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
- (6) Where a bill is drawn upon or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.
- (7) Where the drawee or acceptor of a bill is dead and no place of payment is specified, presentment must be made to his executor if such there be, and with the exercise of reasonable diligence he can be found.
- (8) A presentment through the post office, if in due course, is sufficient.

44. (1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with—

- (a) where after the exercise of reasonable diligence presentment as required by this Proclamation cannot be effected. The fact that the holder has reason to believe that the bill will on presentment be dishonoured does not dispense with the necessity for presentment;
- (b) where the drawee is a fictitious person;

- (c) as regards the drawer, where the drawee or acceptor is not bound as between himself and the drawer to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;
- (d) as regards an endorser, where the bill was accepted or made for the accommodation of that endorser and he has no reason to expect that the bill would be paid if presented;
- (e) by waiver of presentment, express or implied;
- (f) where the drawee or acceptor is insolvent, or has assigned his estate.

45. (1) A bill is dishonoured by non-payment—

- (a) when it is duly presented for payment and payment is refused or cannot be obtained; or
- (b) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Proclamation, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and endorsers accrues to the holder.

46. Subject to the provisions of this Proclamation, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each endorser, and any drawer or endorser to whom such notice is not given is discharged; provided that—

- (1) Where a bill is dishonoured by non-acceptance and notice of dishonour is not given, the rights of a holder in due course, subsequent to the omission, shall not be prejudiced by the omission.
- (2) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted.

47. Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules:—

- (1) The notice must be given by or on behalf of the holder, or by or on behalf of the endorser, who at the time of giving it is himself liable on the bill.
- (2) Notice of dishonour may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.
- (3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior endorsers who have a right of recourse against the party to whom it is given.
- (4) Where notice is given by or on behalf of an endorser entitled to give notice, as hereinbefore provided, it enures for the benefit of the holder and all endorsers subsequent to the party to whom notice is given.
- (5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment.
- (6) The return of a dishonoured bill to the drawer or an endorser is in point of form deemed a sufficient notice of dishonour.
- (7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A mis-description of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.
- (8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf.
- (9) Where the drawer or endorser is dead and the party giving notice knows it, the notice must be given to an executor, if such there be, and with the exercise of reasonable diligence he can be found.
- (10) Where the drawer or endorser is insolvent, notice may be given either to the person himself or to the person in whom his estate is by law vested.

- (11) Where there are two or more drawers or endorsers who are not partners, notice must be given to each of them unless one of them has authority to receive such notice for the others.
- (12) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter. In the absence of special circumstances notice is not deemed to have been given within a reasonable time unless—
 - (a) where the person giving and the person to receive notice reside in different places, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;
 - (b) where the person giving and the person to receive notice reside in different places, the notice is sent off on the business day next after the dishonour of the bill if there be a post at a convenient hour on that day; and if there be no such post on that day, then by the next post thereafter.
- (13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.
- (14) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after dishonour.
- (15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour notwithstanding any miscarriage by the post office.

48. (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with—

- (a) when after the exercise of reasonable diligence notice as required by this Proclamation cannot be given to or does not reach the drawer or endorser sought to be charged ;
- (b) by waiver expressed or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice ;
- (c) as regards the drawer in the following cases, namely :—
 - (i.) where drawer and drawee are the same person ;
 - (ii.) where the drawee is a fictitious person or a person not having capacity to contract ;
 - (iii.) where the drawer is the person to whom the bill is presented for payment ;
 - (iv.) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill ;
 - (v.) where the drawer has countermanded payment ;
- (d) as regards the endorser in the following cases, namely :—
 - (i.) where the drawee is a fictitious person or a person not having capacity to contract and the endorser was aware of the fact at the time he endorsed the bill ;
 - (ii.) where the endorser is the person to whom the bill is presented for payment ;
 - (iii.) where the bill was accepted or made for his accommodation.

49. (1) Where a bill has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where a bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested the drawer and endorsers are discharged, with the exception of the drawer or payee of a cheque on a banker as hereinafter defined.

(2) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(3) Subject to the provisions of this Proclamation, when a bill is noted or protested it must be noted on the day of its dishonour. When a bill has been duly noted the protest may be subsequently extended as of the date of the noting.

(4) Where the acceptor of a bill becomes insolvent or assigns his estate or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and endorsers.

(5) A bill must be protested at the place where it is dishonoured: Provided that—

(a) When a bill is presented through the post office and returned by post dishonoured it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours then not later than the next business day.

(b) When a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance it must, if protested, be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary.

(6) A protest must contain a copy of the bill and must be signed by the notary making it, and must specify—

(a) the person at whose request the bill is protested;

(b) the place and date of protest, the cause or reason for protesting the bill, the demand made and the answer given (if any), or the fact that the drawee or acceptor could not be found.

(7) Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(8) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances

beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate the bill must be noted or protested, when necessary, with reasonable diligence.

50. (1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable it is not necessary to protest it or that notice of dishonour should be given to him.

(4) Where a holder of a bill presents it for payment he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

LIABILITIES OF PARTIES.

51. A bill of itself does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Proclamation is not liable on the instrument.

52. The acceptor of a bill by accepting it—

- (1) engages that he will pay it according to the tenor of his acceptance;
- (2) is precluded from denying to a holder in due course—
 - (a) the existence of the drawer, the genuineness of his signature and his capacity and authority to draw the bill;
 - (b) in the case of a bill payable to drawer's order the then capacity of the drawer to endorse, but not the genuineness or validity of his endorsement;
 - (c) in the case of a bill payable to the order of a third person the existence of the payee and his then capacity to endorse, but not the genuineness or the validity of his endorsement.

53. (1) The drawer of a bill by drawing it—

- (a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any endorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;
- (b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse.

(2) The endorser of a bill by endorsing it—

- (a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent endorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;
- (b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous endorsements;
- (c) is precluded from denying to his immediate or a subsequent endorsee that the bill was at the time of his endorsement a valid and subsisting bill, and that he had then a good title thereto.

54. Where a person signs a bill otherwise than as drawer or acceptor he or she thereby incurs the liabilities of an endorser to a holder in due course.

55. Where a bill is dishonoured the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:—

- (1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer or from a prior endorser—
- (a) the amount of the bill;

- (b) interest thereon in accordance with the stipulation (if any) in the bill, or from the time of presentment for payment if the bill is payable on demand, or from the maturity of the bill in any other case;
- (c) the expenses of noting, and where the protest has been extended the expenses of the protest.
- (2) In the case of a bill which has been dishonoured abroad in lieu of the above damages the holder may recover from the drawer or an endorser, and the drawer or an endorser who has been compelled to pay the bill may recover from any party liable to him the amount of the re-exchange, with interest thereon until the time of payment.
- (3) Where by this Proclamation interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate interest as damages may or may not be given at the same rate as interest proper.

56. (1) Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it he is called a transferor by delivery.

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it and that at the time of transfer he is not aware of any fact which renders it valueless.

DISCHARGE OF BILL.

57. (1) A bill is discharged by payment in due course or *pro tanto* by payment of part notified by endorsement on the bill if such payment be made by or on behalf of the drawee or acceptor.

(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an endorser it is not discharged; but—

- (a) where a bill payable to or to the order of a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill;
- (b) where a bill is paid by an endorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements, and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

58. When a bill payable to order on demand is drawn on a banker, and the banker pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the endorsement of the payee or any subsequent endorsement was made by or under the authority of the person whose endorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such endorsement has been forged or made without authority; provided such endorsement does not purport to be that of a person who is a customer of the banker at the branch on which the said bill is drawn.

59. When the acceptor of a bill is or becomes the holder of it at or after its maturity in his own right the bill is discharged.

60. (1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged. The renunciation must be in writing on the bill unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

61. (1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his

agent. In such case any endorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.

(3) A cancellation made unintentionally or under a mistake or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority.

62. (1) Where a bill or acceptance is materially altered, then the liability of all parties who were parties to the bill at the date of alteration, and who did not assent to it, must be regarded as if the alteration had not been made; but any party who has himself made, authorised or assented to the alteration and all subsequent endorsers are liable on the bill as altered.

(2) Amongst material alterations are the following:—Any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally the addition of a place of payment, without the acceptor's assent.

ACCEPTANCE AND PAYMENT FOR HONOUR.

63. (1) Where a bill of exchange has been protested for dishonour by non-acceptance or protested for better security and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest for the honour of any party liable thereon or for the honour of the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour *supra* protest in order to be valid must—

(a) be written on the bill and indicate that it is an acceptance for honour;

(b) be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour its maturity is calculated from the date of noting for non-acceptance, and not from the date of acceptance for honour.

64. (1) The acceptor for honour of a bill by accepting it engages that he will on due presentment pay the bill according to the tenor of his acceptance if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment and that he receives notice of these facts.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

65. (1) Where a dishonoured bill has been accepted for honour *supra* protest or contains a reference in case of need it must be protested for non-payment before it is presented for payment to the acceptor for honour or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment the bill must be posted or forwarded for presentment not later than the business day next following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstances which would excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

66. (1) Where a bill has been protested for non-payment any person, not being a party already liable thereon, may intervene and pay it *supra* protest for the honour of any party liable thereon or for the honour of the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour *supra* protest in order to operate as such, and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payer for honour or his agent in that behalf, declaring his intention to pay the bill for honour and for whose honour he pays.

(5) Where a bill has been paid for honour all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is substituted for and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays and all parties liable to that party.

(6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment *supra* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

LOST INSTRUMENTS.

67. Where a bill has been lost before it is overdue the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving adequate security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill he may be compelled to do so.

68. In any action or proceeding upon a bill other than a proceeding for provisional sentence the Court or a Judge may order that the loss or non-production of the instrument shall not be set up by way of defence, provided an indemnity be given to the satisfaction of the Court or Judge against the claims of any other person upon the instrument in question.

BILL IN A SET.

69. (1) Where a bill is drawn in a set, each part of a set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

(2) Where a holder of a set endorses two or more parts to different persons, he is liable on every such part, and every endorser subsequent to him is liable on the part he has himself endorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

CONFLICT OF LAWS.

70. Where a bill drawn in one country, Colony, or State is negotiated, accepted or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:—

- (1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of every supervening contract, such as acceptance or endorsement or acceptance *supra* protest, is determined by the law of the place where such contract was made. Provided—
 - (a) where a bill is issued out of this Colony it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;
 - (b) where a bill issued out of this Colony conforms as regards requisites in form to the law of the Colony it may for the purpose of enforcing payment thereof be treated as valid as between all persons who negotiate, hold or become parties to it in this Colony.

- (2) Subject to the provisions of this Proclamation, the interpretation of the contract of the drawer, endorser, acceptor or acceptor *supra* protest of a bill is determined by the law of the place where such contract is made.

Provided that where a bill drawn and payable in this Colony is endorsed elsewhere the endorsement shall as regards the payer be interpreted according to the law of this Colony.

- (3) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour or otherwise are determined by the law of the place where the act is done or the bill is dishonoured.
- (4) Where a bill is drawn out of but payable in this Colony and the sum payable is not expressed in currency of this Colony the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.
- (5) Where a bill is drawn in one country, Colony or State and is payable in another the due date thereof is determined according to the law of the place where it is payable.

PART III.

CHEQUES ON A BANKER.

71. A cheque is a bill of exchange drawn on a banker payable on demand. Except as otherwise provided in this part, the provisions of this Proclamation applicable to a bill of exchange payable on demand apply to a cheque.

72. Subject to the provisions of this Proclamation—

- (1) Where a cheque is not presented for payment within a reasonable time of its issue and the drawer or person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual

damage through the delay, he is discharged to the extent of such damage; that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

- (2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.
- (3) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

73. The duty and authority of a banker to pay a cheque on him by his customer are determined by—

- (1) countermand of payment;
- (2) notice of the customer's death;
- (3) notice of the customer having become insolvent.

CROSSED CHEQUES.

74. (1) Where a cheque bears across its face an addition of—

- (a) the words "and Company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or
- (b) two parallel transverse lines simply, either with or without the words "not negotiable";

that addition constitutes a crossing and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing and the cheque is crossed specially and to that banker.

75. (1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is uncrossed the holder may cross it generally or specially.

(3) Where a cheque is crossed generally the holder may cross it specially.

(4) Where a cheque is crossed specially or generally the holder may add the words "not negotiable."

(5) Where the cheque is crossed specially the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque or a cheque crossed generally is sent to a banker for collection he may cross it specially to himself.

76. A crossing authorised by this Proclamation is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Proclamation, to add to or alter the crossing.

77. (1) Where a cheque is crossed generally the banker on whom it is drawn shall not pay it otherwise than to a banker.

(2) Where a cheque is crossed specially the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed or to his agent for collection being a banker.

(3) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(4) Where the banker on whom the cheque is drawn which is so crossed nevertheless pays the same or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed or to have had a crossing which has been obliterated or to have been added to or altered otherwise than as authorised by this Proclamation, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Proclamation, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed or to his agent for collection being a banker, as the case may be.

78. Where the banker on whom a crossed cheque is drawn in good faith and without negligence pays it if crossed generally to a banker, and if crossed specially to the banker to whom it is crossed or his agent for collection being a banker, the banker paying the cheque, and if the cheque has come into the hands of the payee the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

79. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

80. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

81. Sections 74 to 80 of this Proclamation shall extend to any document issued by a customer of any banker and intended to enable any person to obtain payment on demand from such banker of the sum mentioned in such document, and shall so extend in like manner as if the said document were a cheque.

Provided that nothing herein contained shall be deemed to render any such document a negotiable instrument.

PART IV.

PROMISSORY NOTES.

82. (1) A note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is endorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

83. A note is inchoate and incomplete until delivery thereof to the payee or bearer.

84. (1) A note may be made by two or more makers, and they may be liable thereon jointly or jointly and severally according to its tenor.

(2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note, and any note signed by two or more persons is deemed to be their joint and several note in the absence of a contrary intention appearing upon the face of it.

85. (1) Where a note payable on demand has been endorsed it must be presented for payment within a reasonable time of the endorsement. If it be not so presented the endorser is discharged.

(2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated it is not deemed to be overdue for the purpose of affecting the holder with defects of title of which he had no notice by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

86. (1) Where a note is in the body of it made payable at a particular place it must be presented for payment at that place in order to render the maker liable unless the particular place mentioned is the place of business of the payee and the note remains in his hands. In any other case presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the endorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place presentment at that place is necessary in order to render an endorser liable; but when a place of payment is indicated by way of memorandum only presentment at that place is sufficient to render the endorser liable; but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

87. The maker of a note by making it—

(1) engages that he will pay it according to its tenor;

(2) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse.

88. (1) Subject to the provisions in this part and except as by this section provided, the provisions of this Proclamation relating to bills of exchange apply with the necessary modifications to notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes, namely, the provisions relating to—

- (a) presentment for acceptance;
- (b) acceptance;
- (c) acceptance *supra* protest;
- (d) bills in a set.

PART V.

SUPPLEMENTARY.

89. A thing is deemed to be done in good faith within the meaning of this Proclamation where it is in fact done honestly, whether it is done negligently or not.

90. Where by this Proclamation any instrument or writing is required to be signed by any person it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority, and the authorised sealing with a corporate seal of a corporation or the authorised stamping with an official stamp of any bank or company shall be deemed to be sufficient and equivalent to signature or endorsement of any such instrument or writing.

91. Where by this Proclamation the reasonable or other time limited for doing any act or thing is less than four days, in reckoning such time non-business days are excluded.

92. For the purposes of this Proclamation where a bill or note is required to be protested within a specified time or before some further proceeding is taken it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding, and the formal protest may be extended at any time thereafter as of the date of the noting.

93. Where a dishonoured bill or note is authorised or required to be protested and the services of a notary cannot be

obtained at the place where the bill is dishonoured, any landowner or householder of the place may in the presence of two witnesses give a certificate signed by them attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill. The form given in the schedule to this Proclamation may be used with necessary modifications, and if used shall be sufficient.

94. The provisions of this Proclamation as to crossed cheques shall apply to a warrant for payment of a dividend, to a coupon for payment of interest and to postal or money orders.

95. Nothing in this Proclamation shall affect the provisions of or in any way restrict—

- (1) the Stamp Laws or any Law for the time being in force relating to the revenue;
- (2) Law No. 2 of 1893, relating to banks, and any amendment thereof;
- (3) the Laws relating to companies;
- (4) the procedure and practice in regard to the granting of provisional sentence in judicial proceedings.

But all other Laws inconsistent with the provisions of this Proclamation shall be repealed from and after the taking effect of this Proclamation.

96. This Proclamation shall be known and cited as "The Bills of Exchange Proclamation, 1902," and shall take effect from and after the 15th April next.

SCHEDULE.

FORM OF PROTEST WHICH MAY BE USED WHEN THE SERVICES OF A NOTARY CANNOT BE OBTAINED.

Know all men that I, A. B., landowner or householder of..... in the district of.....Transvaal, at the request of C. D., there being no notary public available, did on the.....day of..... 190.....at.....demand payment (or acceptance) of the bill of exchange hereunder written from E. F., to which demand he made answer (state answer if any), wherefore I now in the presence of G. H. and J. K. do protest the said bill of exchange.

A. B.

Witnesses—

G. H.

J. K.

N.B.—The bill itself should be annexed or a copy of the bill, and all that there is thereon should be underwritten.

PART 4.—TRADING LAWS.

A.—SUNDAY TRADING.

LAW No. 28, 1896.

Whereas it has been found desirable to make provision for the due observance and against the violation of the Sabbath, it is hereby enacted and provided as follows :—

1. The following persons shall, as being guilty of a violation of the Sabbath, be punished for each offence by imprisonment for a period not exceeding one month, or by a fine not exceeding £5. sterling, or, in default of payment, by imprisonment for a period not exceeding one month, viz. :—

- (a) He who on Sunday does any field or garden work, except where such work is done for the preservation of field and other fruits, and in cases of pressing necessity.
- (b) He who fires off a gun or other firearm, without being duly authorised by law or otherwise (*sic*) so to do, unless he does so for the purpose of self-defence and protection of his property.
- (c) He who goes out shooting wild or other animals on Sunday, or goes out hunting the same with dogs or other animals.

It shall, however, be permissible to kill vermin which do damage on Sunday on anyone's ground.

- (d) A transport rider or overseer of a transport wagon who enters the bounds of a town on Sunday, or, being in the town, travels through it, or loads or off-loads freight on Sunday, or causes it to be loaded or off-loaded.
- (e) He who on Sunday causes disturbance or hindrance, whether by driving or riding, whether by making a din or noise, or in any other way.

2. The following persons shall, as being guilty of a violation of the Sabbath, be punished for each offence by imprisonment for a period not exceeding six months, or fine not exceeding £100 sterling, or, in default of payment, by imprisonment for a period not exceeding six months:—

- (a) He who on Sunday sells or offers for sale or exposes for sale goods, merchandise, cattle or other live stock.
- (b) He who on Sunday keeps open a shop, store or other place with the object of selling or trading, or shall be engaged as haircutter, barber or hairdresser.
- (c) He who on Sunday works with steam or other machines or causes the same to be worked. Working with machinery in the public service, *e.g.*, on railways, for lighting or pumping of water for public use, is excepted from the operation of this Law.

3. The goods, merchandise, the cattle or other live stock, and the firearms with which or wherewith the offence stated in Arts. 1 and 2 has been committed, may be seized and attached by any Justice of the Peace, Field Cornet, Assistant Field Cornet, Constable or Gamekeeper, and may, in the event of a fine being inflicted, be sold in order that the fine may be recovered from the proceeds thereof, if the fine is not paid within three weeks after the sentence has become final.

4. Permissible and not punishable are—

- (a) the selling on Sunday of medicines by apothecaries and druggists, and the keeping open on that day of a shop, store, or other place by such persons with the object of selling medicines;
- (b) the supplying on Sunday of the necessary food and drink to travellers and inmates by licensed hotel or boarding-house keepers;
- (c) the selling on Sunday before 9 o'clock in the morning of meat, bread, or fish by butchers, bakers, or fishmongers, and the keeping open during these hours by the said persons of shop, store or other places with the object of selling meat, bread, or fish;
- (d) the selling of milk on Sunday before 9 o'clock in the morning and after 4 o'clock in the afternoon by milk dealers, and the keeping open during these hours of a shop, store, or other place with the object of selling milk.

5. The Government shall have the right to permit or order the delivery on Sunday of eatables or other goods by a Government contractor.

6. The Market Master or other person charged with the care or supervision over the market, who on Sunday on the market sells, offers for sale or permits another person so to sell or offer for sale, goods, merchandise, cattle or other live stock, shall, as being guilty of a violation of the Sabbath, be punished for each offence by imprisonment for a period not exceeding one month, or fine not exceeding £5 sterling, or, in default of payment, by imprisonment for a period not exceeding thirty days.

7. The owner, lessor, or manager of a public billiard room, or other public place of recreation, who allows or permits any game to be played there on Sunday, or any public entertainment to be held there, such as theatrical displays, café-chantants, public dances, concerts (except for sacred music), races, shall be punished by imprisonment for a period not exceeding one month, or fine not exceeding £50 sterling, or, in default of payment, by imprisonment for a period not exceeding one month.

8. All Landdrosts, Justices of the Peace, Field Cornets, Assistant Field Cornets, and Police Officials, shall have the right to disperse persons assembled on Sunday at a public or open place to play or gamble there, or hold dog or cock fights there, or hold races there, or pit animals to run against each other for the purpose of betting, or in order to attend any such sports, as also in cases of beer and dance parties held by natives, and to seize and attach, destroy, or in other ways dispose of the contrivances, instruments, or animals used thereat.

All persons as aforesaid engaged in playing or gambling, or in holding dog or cock fights, races, or in pitting animals to run against each other, or making bets thereon, or attending on such occasions, may be arrested and punished by imprisonment for a period not exceeding six months, or by a fine not exceeding £100 sterling, or, in default of payment, by imprisonment for a period not exceeding six months.

9. Landdrosts, other officials with similar jurisdiction, and all Resident Justices of the Peace, shall have jurisdiction in all cases of contravention of this Law.

10. The Government shall have the power in each separate case to define what portion of the fine, the forfeited goods, or the

proceeds thereof shall be awarded to the informant, and who, with regard hereto, is to be deemed the informant.

11. The Laws No. 2, 1888, and No. 16, 1894, are hereby repealed.

12. This Law shall come into operation immediately after publication in the *Staatscourant*.

ORDINANCE No. 54, 1903.

By § 12 of this Ordinance Article 2 of Law No. 28 of 1896, in so far as it applies to the working of a mine, is repealed. Section 5 of this Ordinance enacts that—

It shall not be lawful to perform any work in or about a mine after twelve midnight on Saturdays up to twelve midnight on Sundays, or after twelve midnight on the day before Christmas Day or Good Friday up to twelve midnight on such day, except such work as is necessary and unavoidable in order to maintain the mine and machinery in proper working condition. Such necessary and unavoidable work is—

- (a) attending to and working pumping machinery and steam boilers appertaining to the same;
- (b) such repairs, either above or below the ground, as cannot be delayed without causing damage and cannot be done on working days without unduly interfering with the work of the mine. The necessary labour in the workshops required for such repairs shall also be permitted;
- (c) the chemical treatment of ore;
- (d) keeping on blast or smelting furnaces;
- (e) running stamp mills or other machinery used for crushing ore.

Should it be necessary to carry on temporarily any other work in or about a mine on Sunday, Christmas Day or Good Friday, permission to do so may be granted by the Government Mining Engineer on application made to the Inspector of Mines.

Any person contravening the provisions of this section shall be liable to a fine not exceeding £75, or, in default of payment, to imprisonment, with or without hard labour, for a period not exceeding three months.

PART 4.—TRADING LAWS.

B.—TRADING ON MINING PREMISES

(TRUCK LAW).

LAW No. 18, 1896.

1. No trading licence shall in future be granted or renewed for a place or premises pegged off or held under licence for mining purposes, which is closed off or fenced in.

2. No Director or Secretary of a Company, or employer of labour for a Company, and no Mine Manager shall have the right to be a shareholder in any store or business on mining premises.

They shall neither directly nor indirectly be shareholders thereof, under penalty of the amount mentioned in Art. 5.

3. The employer of labour who, on behalf of any Mining Company, and authorised by it so to do, pays out the wage of a workman or employee of any mine, or any advance on such wage, otherwise than in current coin, or who stands security for the debts of such workman or employee in any store or canteen, shall be punished for the first offence by a fine not exceeding £100, or imprisonment for a period not exceeding one month, and upon a second or further contravention, by a fine not exceeding £300, or imprisonment for a period not exceeding twelve months.

Where the employer referred to in the preceding paragraph is a Company or a Syndicate, such Company or Syndicate may be prosecuted upon contravention of the provisions contained in that paragraph.

The service of the summons against such Company or Syndicate may be effected either on the Secretary or on one of the Managers or Directors.

Upon non-payment within three days, a writ shall be issued against the goods of such Company or Syndicate without further form of process.

4. No person, who has been convicted of selling unwrought precious metals, amalgam or precious stones, or of being concerned therein, may, after such conviction, carry on business on any mining property.

5. Every contravention of the provisions of Articles 1, 2, and 4 of this Law shall be punished upon the first contravention by a fine not exceeding £100, or, in default of payment, by imprisonment, with or without hard labour, for a period not exceeding three months, and upon the second contravention by a fine not exceeding £200, or, in default of payment, by imprisonment, with or without hard labour, for a period not exceeding six months, and upon a third contravention by a fine not exceeding £300, or, in default of payment, by imprisonment, with or without hard labour, for a period not exceeding eighteen months, and cancellation of the licence issued.

6. The Landdrosts, Special Landdrosts, Assistant Landdrosts, and Resident Justices of the Peace, shall have jurisdiction in respect of all contraventions of this Law.

7. This Law shall come into operation on the 1st January, 1897.

PART 4.—TRADING LAWS.

C.—TRANSPORT RIDERS.

LAW No. 1, 1893.

Regulations for Travellers, Transport Riders and Trekkers.

1. Every farm shall be subject to a servitude of one outspan.

Farms adjacent to a proclaimed transport road shall be subject to a servitude of an outspan to be beacons off by the owner or lessee in a practicable place.

The size of an outspan shall be determined according to the size of the farm, estimated on the basis that a full farm of 3,750 morgen shall be subject to an outspan 50 morgen in extent.

2. The transport roads shall be proclaimed by the Government.

The width of a proclaimed road shall be 30 feet, with this proviso, that transport riders shall, where required and where the circumstances make it necessary, have the right to turn out of the road 30 yards to the one side or the other, at their own responsibility however, and provided that they occasion no damage to fences or other constructions or to cultivated land.

3. Each traveller and transport rider shall be obliged to keep within the 30 feet of proclaimed transport road, except in cases provided for in Art. 2, and shall at the same time be bound to keep strictly within the limits, as defined in Art. 1, of the outspans along proclaimed transport roads.

4. It shall not be lawful for transport riders to travel with or without laden wagons along roads other than those proclaimed, unless such a transport rider is obliged to leave the road in order to get to his place of abode.

5. No one shall be permitted to delay longer than 24 hours at an outspan, unless he is altogether prevented by accidents, swollen rivers, or other unforeseen circumstances, from proceeding further.

6. Every contravention of the above Articles shall be punished by a fine not exceeding £5, in addition to his liability to compensate the owner or lessee, to whom also the half of the fine levied and paid shall be awarded.

7. Every owner of ground adjoining a road (trek pad) (which is not a proclaimed transport road) shall be bound to allow an outspan for trekkers (people moving from one farm to another with their cattle or goods) on the basis of 100 morgen (that is a square whose base is about 1,000 yards) for each full farm of 3,750 morgen, to be decreased according to the size of the farm, as also facilities for the grazing or trekking of stock running loose along any such road to a distance not exceeding 300 yards per full farm of 3,750 morgen, to be reduced in proportion to the size of the farm, but in any case the width shall not be less than 150 feet on the one side or the other of the road, such side, if need be, to be pointed out by the owner (in case of dispute between the owner and trekkers, the Landdrost, Field Cornet, Assistant Field Cornet, or Resident Justice of the Peace, shall decide); and also to allow cattle to drink in any river, stream, or pool, situated in or alongside the trek path, artificial dams used for the irrigation of gardens and arable lands being excepted.

8. No live stock running loose shall be driven along the veld of any farm. It shall, however, be permissible for cattle and stock to proceed across any farm slowly grazing, provided they keep within the limits prescribed by Art. 7, alongside some public road, which side the owner or lessee may cause to be pointed out, if he shall so choose, and provided that not longer than a day is taken to trek (proceed) a distance of two hours on foot, and provided that no damage shall be occasioned to any dam or water furrow, garden or arable lands, by any stock trekking outside the road.

9. Such stock shall not be allowed to intermingle with any stock of the owner or lessee, which may be grazing on such farm.

Trekkers or travellers shall, however, have the right to drive out of the way such of the owner's stock as may be grazing on the outspan or within the limits defined by Art. 7.

Upon contravention hereof, the owner of the stock so trekking shall be responsible for such damage as may accrue to the owner or occupier of the ground, to be assessed and awarded by the local official, and shall be liable to a fine not exceeding £7 10s. according to the nature of the case.

The half of the fine inflicted and paid shall be awarded to the owner or lessee of such farm.

10. In cases where arable lands, gardens, or orchards are or shall be laid out within the limit of 300 yards, mentioned in Art. 7, the owner, lessee or occupier of the ground shall be obliged to have the same enclosed properly, in default whereof he shall not be entitled to compensation for damage occasioned by the stock whilst proceeding and grazing as it proceeds along the trek-road.

11. The owner or lessee shall be entitled to alter the route of the public trek-road across his farm, provided that such trek-road (as diverted) does not entirely diverge from the direction it is the object of the trekkers to proceed in, and is not impracticable for the trekkers, as being across mountains or stretches of veld difficult to travel along and injurious to stock.

In the event of dispute, the Resident Magistrate of the district shall decide the same in consultation with the Field Cornet of the ward. The Magistrate shall notify such decision to the Chief of Public Works. The parties may appeal from this decision to the Government. The request for setting aside or amending such decision of the Magistrate shall set out the grounds on which it is based, and be transmitted in writing to the Chief of Public Works, who shall append his report thereon, and send it to the Government.

12. Trekkers with cattle and stock, proceeding along a proclaimed transport road, shall enjoy the same privileges as are defined in Art. 7 of this Law.

LAW No. 19, 1896.

Whereas it appears necessary to supplement Law No. 1, 1893, by certain provisions relating to transport riders who reside in foreign parts, it is hereby enacted as follows:—

1. Between Articles 15 and 16 of the said Law the following new Articles shall be inserted:—

Art. 15 (a) Every transport rider residing beyond the limits of this State, who wishes to ride transport and to operate as a common carrier within this Republic, shall be provided with a licence issued to him by some Landdrost or such official as may be appointed by the Government for that purpose, upon payment of £2 per wagon per quarter.

Art. 15 (b) The said licence shall, upon request, be exhibited by him to any Landdrost, Mining Commissioner, Field Cornet, Assistant Field Cornet, Justice of the Peace, Tax Collector or Police Official.

Art. 15 (c) Every transport rider or carrier residing beyond the limits of this Republic shall henceforth have a board attached to his wagon, whereon the name of the owner, his residence and occupation at his place of residence shall be set forth in clear characters.

Art. 15 (d) Contravention of Arts. 15 (a), 15 (b), and 15 (c) shall be punished by a fine equivalent to three times the amount of the licence and the costs of suit, or, in default of payment, imprisonment, with or without hard labour, for a period not exceeding three months.

The transport rider residing outside the limits of this State, on whose board as referred to in Art. 15 (c) any false statement appears, shall be punished by imprisonment, with or without hard labour, for a period not exceeding six months.

The following persons shall, in terms of this Law, be taken to be transport riders or carriers not residing in this State, viz. :—

Those who cannot prove that they are *bonâ fide* inhabitants of this country, and registered as such in the Field Cornet's books.

2. This Law shall come into operation three months after publication in the *Staatscourant*.

PART 4.—TRADING LAWS.

D.—PAWNBROKING.

LAW No. 13, 1894.

Whereas it is considered necessary to make rules and regulations with regard to pawnbrokers, it is hereby enacted as follows :—

1. Any person or Company desirous of carrying on business as a pawnbroker within the State shall take out a licence at the office of the Landdrost, Mining Commissioner, or other official appointed for the purpose, within whose jurisdiction he resides, viz. :—

				£	s.	d.
For	twelve months	...	...	40	0	0 .
„	nine „	...	...	30	0	0
„	six „	...	...	20	0	0
„	three „	...	...	12	10	0

2. The Landdrost, Mining Commissioner, or other qualified official, shall have the right to refuse such licence if he deems such refusal advisable in the interest of his district or division.

3. The Landdrost and Mining Commissioners shall have jurisdiction with regard to contraventions of this Law.

4. No person or Company shall have the right to accept or to advance money or value on, or to pay for, or to buy any goods or property, should they suspect that such articles are not the *bond fide* property of the person or persons who offer the same for pawn or sale; but shall be obliged in suspicious cases to immediately inform the proper authorities thereof.

5. Repealed by Ordinance 40 of 1903.

6. All articles and property not released within the time agreed upon shall be sold on the public market at a date at least fourteen days after publication has been made in the *Staatscourant* and one of the public papers published in the town where the pawnbroker resides.

7. The pawnbroker's licence shall not be transferable, and the person or Company in whose name the licence is issued shall in every case be liable for any contravention of this Law.

8. Anyone desirous of carrying on such business shall be bound before the licence is issued to give security to the amount of £500, together with two competent sureties in possession of unmortgaged fixed property *in solidum* in the amount of £250 each.

9. The form of deed of security shall be more or less as follows:—

Deed of Security for Pawnbrokers.

Appeared before me,....., this.....
day of....., 19....., residing at
....., who declares that he is indebted to the State
Attorney of the South African Republic (his lawful successors in office
or substitutes) in the sum of £500; and.....of.....
.....and.....of....., who declare
that they each are indebted jointly and severally *in solidum* to the said
State Attorney, or his lawful successors in office or substitutes, in the
sum of £250; accordingly renouncing the legal exceptions of.....
.....with the force of which they declare themselves to be fully
acquainted, to be recovered from the goods and properties of either or
both of them in case the said N. does not fulfil the duties and obligations
enjoined on him by law.

Thus done and signed at the office of.....at.....
.....this.....day of....., signed before
me on day, date and place aforementioned, ...Landdrost
(or Mining Commissioner or other official charged with the issue of
licences).

As Witnesses.

.....
.....

10. The licence may be withdrawn by the Landdrosts or Mining Commissioners respectively, in case of any contravention of this Law.

11. Every contravention of this Law shall be punishable by a fine not less than £3, and not more than £50, or in default of payment, by imprisonment with or without hard labour, as the nature of the case may require, for a term not exceeding six months.

12. No person will be allowed to act as pawnbroker or to carry on that profession without having obtained the licence mentioned in Article 1 of this Law.

13. All regulations in conflict with this Law are hereby repealed.

14. This Law shall come into operation three months after publication in the *Staatscourant* (i.e., on November 4, 1894).

PART 4.—TRADING LAWS.

E.—ADULTERATION.

LAW No. 8, 1896.

Amendment of Art. 38 of Law No. 12, 1894.

Whereas it is deemed necessary to amend Art. 38 of Law No. 12, 1894, it is hereby enacted as follows:—

1. Art. 38 of Law No. 12, 1894, shall hereby lapse, and shall be superseded by the following Article:—

Art. 38. It is prohibited to adulterate or dilute with any foreign substance any distilled liquors or liquids, whether prepared from imported products or materials or not, or from any article manufactured from such products or materials or not, and whether described in this Law or not; or to sell such liquors or liquids, or to keep such liquors or liquids in stock in any building or any locality in which a wholesale or retail trade in distilled liquors is being carried on.

The term adulterated or diluted liquors and liquids as above referred to shall, for the purposes of this Law, be taken to apply, *inter alia*, to—

- (a) distilled liquors or liquids, irrespective of the substance from which they are manufactured, which have an alcoholic standard strength of less than 40 per cent. and a higher alcoholic standard strength than 56 per cent., measured according to the Tralles Alcoholometer;

- (b) distilled liquors or liquids to which foreign substances have been added, whether to increase the bulk or to reduce or conceal the alcoholic standard strength;
- (c) distilled liquors or liquids in which sulphuric acid (acidum sulphuricum) or any other foreign substance is present;
- (d) distilled liquors or liquids which contain more than 0.3 per cent. of fusel oil;
- (e) distilled liquors or liquids of which the exact standard strength amounts to more than 1 per cent.

Exceptions to the above are:—

Methylated spirit stored in jars, bottles or casks, provided with a label, on which the words "Poison, Methylated Spirits," are clearly printed in red letters.

Contravention of this Article shall be punished in terms of Art. 49 (g) of this Law.

2. This Law shall come into operation on 1st September, 1896.

LAW No. 29, 1896.

Amendment of Law No. 2, 1895.

Whereas the necessity has appeared to lay down regulations about the sale of adulterated and tainted food stuffs, liquors and medicines, it is hereby enacted as follows:—

1. Whoever shall sell, offer for sale, exchange, or have in his possession, with the object of selling or exchanging, or shall cause to be sold, offered for sale, traded in, or exchanged, any adulterated or tainted food stuffs, liquors or medicines deleterious for human consumption, shall be punished by a fine not exceeding £50 sterling, or in case of non-payment, by imprisonment for a period not exceeding twelve months, with or without hard labour.

Grain, potatoes, fruits, vegetables, fruits of the soil, and eggs, of which a sample can be delivered, shall be excluded from the operation of paragraph 1 of this Article.

2. Whoever shall intentionally adulterate and render deleterious for human consumption any food stuffs and liquors or medicines, and shall sell the same, offer for sale, or have the same in his possession with the object of selling, or shall cause the same to be sold or offered for sale, shall be punished by a fine not exceeding £100 sterling, or in case of non-payment, by imprisonment for a period not exceeding twelve months, with or without hard labour.

3. Adulterated or tainted food stuffs and liquors or medicines, deleterious for human consumption, shall be immediately seized and destroyed without any compensation.

4. The Lower Courts in this Republic shall have jurisdiction in cases of contravention of this Law.

5. In every district and on every goldfield, where such is necessary, the Government may appoint a competent person who shall be charged and shall be entitled to test and to examine all food stuffs, liquors, or medicines which have been sold, offered for sale, delivered, or are in anyone's possession.

6. The word adulteration in this Law shall be taken to mean the act of mixing or adding any substance deleterious to health, or done with the object of increasing the quality of anything, or deteriorating or concealing the quality.

7. From the moment of this Law coming into operation, all cases which occur shall be punished under this Law without exception.

8. This Law shall come into operation one month after publication in the *Staatscourant*.

LAW No. 6, 1898.

Amendment of Law No. 29, 1896.

Whereas it has appeared to be desirable to introduce certain amendments in Law No. 29, 1896, it is enacted as follows:—

1. As Art. 3 (a) is added:—

All food stuffs which are intended for sale must be kept in a special house, apartment or room for that purpose, which house, apartment or room must be kept in a clean and tidy condition, and must be properly ventilated, and may not be used for any other purpose, and may in no case have direct connection with any sleeping apartment or stable.

Contravention of this Article shall be punished with a fine not exceeding £50 sterling, or, in default of payment, with imprisonment, with or without hard labour, for a period not exceeding six months, and in addition to this the licence may be withdrawn or refused. The provisions of this Article shall be applicable only to licensed dealers, shopkeepers or hawkers.

2. At the end of Art. 6 is to be added:—

Or the removal of any elementary constituent from any commodity, whereby the quality is impaired.

3. This amendment shall come into operation immediately after publication in the *Staatscourant*.

PART 4.—TRADING LAWS.

F.—WEIGHTS AND MEASURES.

LAW No. 2, 1874.

Whereas it is necessary for the protection of the interests of the burghers of the South African Republic, for the better regulation of trade, and for the general welfare and in the general interest, that there should be a standard of weights and measures in the South African Republic, similar to that which is at present established in the Colony of the Cape of Good Hope and in the Orange Free State: Now, therefore, the Volksraad has deemed fit to provide and enact as it hereby provides and enacts:—

1. All laws and customs in conflict with the provisions of this Law are hereby repealed.

2. The State President is hereby instructed as speedily as possible after the passing of this Law to order and procure a copy or model—(a) of the standard pound avoirdupois, made of such metal or such materials as shall be best calculated to resist the action of the atmosphere and wear and tear; (b) of the standard yard, the standard gallon, the standard bushel, the standard bucket, and the standard of such multiples thereof as are at present preserved in the Colony of the Cape of Good Hope and in the Orange Free State in terms of Ordinance No. 1, 1869, at the office of the Treasurer-General, or the official charged therewith.

3. The copies or models mentioned in the previous Article shall be deposited in the office of the Treasurer-General, and carefully preserved in a chest, whereto there shall be two locks, with separate and distinct keys, whereof one shall remain with the State Secretary, and the other with the Treasurer-General; and such copies or models shall be, and the same are hereby declared to be, the original and genuine standards of all weights and measures established by this Law.

And the said Treasurer-General shall, upon written request of any Landdrost with permission of the State President, upon reasonable notice and at all reasonable times produce for inspection any one or more of the said weights and measures, in order to test and inquire into the correctness of any weight or measure.

4. A sufficient number of copies and models of the standard weights and measures mentioned in Art. 2 of this Law shall be procured, so that each of the Landdrosts of the various districts may be provided with a set.

5. Each Landdrost shall be obliged and in duty bound to carefully preserve such models, and at all reasonable times, upon reasonable notice in writing from any person requesting him so to do, produce such model or models for inspection and for testing the correctness of any measure or weight, upon payment of a fee of one shilling sterling.

6. From and after the coming into operation of this Law, the weights and measures hitherto in vogue shall be abolished, and if any person after the coming into operation of this Law shall sell anything by any standard of weights and measures, other than that deposited at the office of the Treasurer-General, he shall be liable to a fine not exceeding 40s. sterling, provided always that all agreements of sale or other agreements concluded in good faith before the coming into operation of this Law shall be performed and judged of in like manner as if this Law had never been passed, and provided also that nothing herein contained (in regard to the measure of extension) shall apply to any sale of land, and provided further that nothing herein contained shall apply to the use of any weights in the sale of gold, silver, precious stones, or in the sale of drugs by retail, for which special weights are in use.

7. After the coming into operation of this Law any Landdrost, Justice of the Peace, or Chief Constable shall have the right, at all reasonable times, to enter any place within the limits of his district wherein goods shall be kept for sale, or wherein any trade by measure or weight shall be carried on, and therein to examine all measures, weights, balances, steelyards or such other weighing machines there being, and to compare and try the same with the copies of the standard weights and measures which shall be preserved by the Treasurer-General or the respective Landdrost, as is provided in Arts. 3 and 4.

8. If upon such examination as in the preceding section mentioned it shall appear that any weight or measure is not found according to the standard weights and measures by this Act established, or is light or otherwise unjust, the same shall be liable to be seized, and the person or persons in whose possession the same shall be found shall upon conviction incur the forfeiture thereof, and also a penalty not exceeding £5.

9. Any person who shall have in his possession any balance, steelyard or other weighing machine, which shall, on such examination as is mentioned in Art. 7, be found incorrect or otherwise unjust, or who shall refuse or neglect to produce for such examination, when thereto required, all weights, measures, balances, steelyards, or other weighing machines which shall be in his possession, or shall otherwise obstruct or hinder such examination, shall incur the forfeiture of such balance, steelyard or other weighing machine as shall have been found to be incorrect or unjust, or of such of them as he shall have refused or neglected to produce for such examination, or have hindered or obstructed the examination of, and also a penalty of any sum not exceeding £5 sterling.

10. Nothing in this Law contained shall be deemed or taken to prevent any person from being prosecuted, in ordinary course of law, for any fraud or other crime committed by means of false weights, balances or measures.

11. All penalties and forfeitures imposed by any of the provisions of this Law shall be recoverable in the Court of the Magistrate within whose jurisdiction the act or refusal entailing such penalty or forfeiture shall have been done or committed, and may be proceeded for by any person who shall sue for the same, and one moiety of every penalty or forfeiture recovered shall be paid to the party suing for the same, together with his costs as hereinafter mentioned, and the other moiety to the Government; and it shall be lawful for such Magistrate to commit the offender to prison for any term not exceeding one month, in case the party convicted shall not forthwith pay the amount of the penalty imposed, together with the reasonable costs incurred by the party suing for the same, or secure such payment to the satisfaction of such Landdrost.

12. Any weight, measure, balance, steelyard, or weighing machine, adjudged under any of the provisions of this Act to be forfeited, shall be broken up, and, if saleable, sold, and the proceeds thereof, after deducting the expenses of breaking up and

selling the same, shall be paid, one moiety to the party who shall have proceeded for such forfeiture, and the other half to the State Treasury.

13. Every weight and every measure used under the provisions of this Law shall have upon its upper part, and in clear, legible figures, cast or stamped, the number of pounds or length of measure, or sub-multiples of a pound or lineal measure, which it is intended to represent.

14. It shall not be lawful to make use of weights which are manufactured from lead or tin. Provided always that such plug of lead or pewter may be inserted into any weight as may be *bond fide* necessary for the purpose of adjusting such weight. Provided, however, that such plug shall not be used for the purpose of adjustment to a greater extent than as follows, namely :—

In weights from 10 lbs. to 50 lbs., to the extent of a two-hundredth part of such weight so to be adjusted.

Any person contravening this Article shall incur and be liable to a penalty not exceeding £5.

15. It is hereby provided that the standard yard shall be three feet, the standard muid three bushels or nine buckets, the standard bushel three buckets, and the average weight of a muid of corn shall be 200 lbs.

16. In all sentences passed under this Law a term of imprisonment shall be specified, which shall be undergone if the fine inflicted shall not be immediately paid. The Court of Landdrost shall have jurisdiction in all cases mentioned in this Law.

17. As soon as the standard weights and measures ordered to be obtained for the purposes of this Law shall have arrived at Pretoria, the State President shall by proclamation in the *Staats-courant* give notice thereof and the several descriptions and denominations of the same, and shall, at the same time, fix the day upon which this Law shall come into operation, which day shall not be earlier than six months nor later than twelve months from the date of such proclamation; and this Law shall come into operation and take effect from and after the day so fixed accordingly.

LAW No. 6, 1896.

Amendment of Law No. 2, 1874, being extension of Art. 7.

7. After the coming into operation of this Law, any Landdrost, Justice of the Peace, or Chief Constable, or other person appointed for the purpose by the Government, shall be entitled at all reasonable times to enter any place, within the limits of his district, where goods are kept for sale, or where any trade by measure or weight is carried on, and then and there inspect all measures, weights, scales, steelyards and other weighing machines which may be there, and compare and test the same with and according to the standard model weights and measures which are kept by the Treasurer-General, or the respective Landdrosts, as prescribed by Arts. 3 and 4. The measures, weights, scales and weighing machines so tested, compared and inspected, if found correct, may be marked in such manner as the Government may determine.

Further, the Landdrosts in the districts and the Mining Commissioners on the goldfields shall be obliged at least twice a year to have all measures, weights, scales, steelyards or other weighing machines within their jurisdiction marked, and shall report the result each year in the month of January to the Government.

This amendment shall come into operation on the 1st September, 1896.

PROCLAMATION OF 19TH JUNE, 1891.

A Proclamation dated 19th June, 1891, defines the kinds of weights, etc., of which models are to be kept:—

WEIGHTS.—56 lbs., 28 lbs., 14 lbs., 7 lbs., 4 lbs., 2 lbs., 1 lb. (avoirdupois), 8 ounces, 4 ounces, 2 ounces, 1 ounce, 8 drams, 4 drams, 2 drams, 1 dram, $\frac{1}{2}$ dram.

DRY MEASURE.—1 bushel, $\frac{1}{2}$ bushel, 1 peck.

MEASURE FOR LIQUIDS.—1 gallon, $\frac{1}{2}$ gallon, 1 quart, 1 pint, $\frac{1}{2}$ pint, 1 gill, $\frac{1}{2}$ gill.

LONG MEASURE.—1 yard divided into feet, inches and into $\frac{1}{16}$, $\frac{1}{8}$, $\frac{1}{4}$, and $\frac{1}{100}$ parts of an inch.

NOTES.

According to the decision of the Transvaal High Court in *Economic Fire Lighting Co. vs. Holmes* (H., p. 243), an agreement for the delivery of goods by weight is taken to denote net weight, and not gross weight, so that packing, such as casks, is not included in the weight, unless there is a general local custom to the contrary, or a special agreement to the contrary has been made.

PART 5.—REVENUE LAWS.

A.—STAMP DUTIES.

PROCLAMATION No. 12, 1902.

1. In this Proclamation, unless the context otherwise requires, the following expressions in inverted commas shall bear the meanings assigned to them :—

“ Governor ” means the Officer for the time being administering the Government of the Transvaal.

“ Material ” includes every sort of material upon which words or figures can be expressed.

“ Instrument ” includes every written document.

“ Writing ” or “ Written ” includes printing, typewriting, or any process of producing printing or writing.

“ Stamp ” means as well a stamp impressed by means of a die as an adhesive stamp.

“ Stamped,” with reference to instruments and material, applies as well to instruments and material impressed with stamps by means of a die as to instruments and material having adhesive stamps affixed thereto.

“ Executed ” and “ Execution,” with reference to instruments not under seal, mean signed and signature.

“ Money ” includes all sums expressed in British or in any foreign or Colonial currency.

“ Forge ” and “ Forged ” include counterfeit and counterfeited.

“Duty” means any stamp duty for the time being chargeable by law.

“Die” includes any plate, type, tool or implement whatever used in terms of this Proclamation for expressing or denoting any duty or rate of duty or the fact that any duty or rate of duty or penalty has been paid or that an instrument is duly stamped or is not chargeable with any duty, or for denoting any fee, and also any part of any such plate, type, tool, or instrument.

“Marketable Security” includes any stock, debenture, security, share, or the like, of such description as to be capable of being sold in any share market or exchange in South Africa.

2. The Laws specified in the first Schedule of this Proclamation and so much of any other Law as may be repugnant to or inconsistent with the provisions thereof are hereby repealed. Provided that—

- (a) all offences against the provisions of such repealed Laws may be prosecuted and all fine and penalties incurred or chargeable thereunder may be recovered, in the same way as if there had been no such repeal in any case in which such offence was committed or liability to such fine or penalty incurred prior to the taking effect of this Proclamation;
- (b) nothing herein contained shall affect the stamping of any instrument executed prior to the taking effect of this Proclamation.

3. It shall and may be lawful for the Governor from time to time to nominate and appoint such persons as he may think fit, who shall be charged with any or all of the following duties:—

- (a) the providing, custody, and management of proper and sufficient dies and materials for impressing or denoting stamp duties;
- (b) the making, custody, and management, supply, sale and distribution of stamps required for the purposes of this Proclamation;

- (c) the stamping of deeds and the defacing of stamps in accordance with the provisions of this Proclamation.

4. It shall and may be lawful for the Governor from time to time to make regulations for the due discharge of the duties imposed on distributors of stamps, and for the due accounting for all stamps or moneys received therefor, and from time to time to vary or revoke the same.

*5. Subject to such regulations as may from time to time be made by the Governor and to the production of such evidence as the Comptroller of the Treasury may require, the said Comptroller may in his discretion make an allowance in the following cases to any person tendering stamps that may have been spoilt or rendered unserviceable, namely :—

- (a) where a stamp has been inadvertently and undesignedly spoilt, obliterated, or rendered unserviceable, either before it has been affixed to any instrument, or before any material or instrument on which the stamp has been placed has been executed by any party;
- (b) where a stamp has been affixed to any material or instrument which for any reason is not executed by any person or used for the purpose intended;
- (c) where a bill of exchange or promissory note signed by or on behalf of the drawer or maker has not been made use of in any manner whatever or delivered out of his hands or tendered for acceptance or endorsement;
- (d) where an instrument executed by any party thereto has been afterwards found either to be void *ab initio* or to be unfit by reason of any error therein for the purpose originally intended;
- (e) where an instrument executed by any party thereto has not been made use of and is insufficient for the purpose for which it was intended, or becomes void either by reason of the inability or the refusal of some necessary party to execute the same or to complete the transaction according to the instrument;

* For such regulations see Government Notice 232 of 1902 (*Gazette*, 13th June, 1902, p. 849).

- (f) where an instrument executed by any party thereto has been inadvertently and undesignedly spoilt, obliterated, or rendered unserviceable, and in lieu thereof another instrument duly stamped giving effect to the same transaction has been executed.

Provided always—

- (1) that the application for relief shall be made within six months after the stamp has been spoilt, obliterated or rendered unserviceable, or within such further period as may be prescribed by regulations made from time to time by the Governor;
- (2) that the stamp in respect of which allowance is claimed and any instrument or material to which it may have been affixed is given up to the Comptroller of the Treasury to be destroyed;
- (3) that the allowance shall be by giving to the claimant therefor either other stamps or money to the same value, as the Comptroller of the Treasury thinks fit.

6. Where any person inadvertently and undesignedly has used for an instrument liable to duty a stamp of a greater value than was necessary, or has used a stamp for an instrument not liable to any duty, the Comptroller of the Treasury may upon application, and subject to such instrument (if liable to duty) being duly stamped, make an allowance in respect of such excess or unnecessary stamps, in the same manner and subject to the same provisions as set forth in the preceding section, on the instrument in question being produced to him and such allowance being denoted thereon.

7. From and after the commencement of this Proclamation, the stamp duties to be charged for the use of His Majesty in his Colonial Government upon the several instruments specified in the second Schedule to this Proclamation, whether executed in this Colony or relating to the transfer of any property situated in this Colony, or to any matter or thing to be done in this Colony, shall be the several duties in the said Schedule specified, which duties shall be in substitution for the duties theretofore chargeable under the Laws repealed by this Proclamation, and shall be subject to the exemptions contained in this Proclamation and in any other Law for the time being in force.

8. All stamp duties for the time being chargeable by law upon any instruments are to be denoted by adhesive stamps, except where other provision is made, and no adhesive stamp shall be available which does not bear on the face of it that it is a revenue stamp.

9. (1) Every instrument written upon stamped material is to be written in such manner, and every instrument partly or wholly written before being stamped is to be so stamped, that the stamp may appear on the face of the instrument, and cannot be used for or applied to any other instrument written upon the same piece of material.

(2) If more than one instrument be written upon the same piece of material, every one of the instruments is to be separately and distinctly stamped with the duty with which it is chargeable.

10. Except where express provision to the contrary is made by this or any other Proclamation, an instrument containing or relating to several distinct matters is to be separately and distinctly charged as if it were a separate instrument with duty in respect of each of the matters.

11. All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument; and every person who with intent to defraud the revenue—

- (a) executes any instrument in which all the said facts and circumstances are not fully and truly set forth; or
- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances;

shall incur a fine of £50.

12. (1) Where an instrument is chargeable with *ad valorem* duty in respect of—

- (a) any money in any foreign or Colonial currency; or

(b) any stock or marketable security;

the duty shall be calculated on the value on the day of the date of the instrument of the money in British currency according to the current rate of exchange, or of the stock or security according to the average price thereof on such day.

(2) Where an instrument contains a statement of current rate of exchange or average price, as the case may require, and is stamped in accordance with that statement, it is, so far as regards the subject matter of the statement, to be deemed duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

13. (1) An instrument the duty upon which is denoted by an adhesive stamp is not to be deemed duly stamped unless the person required by law to deface the adhesive stamp defaces the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, so as effectively to deface the stamp and render the same incapable of being used for any other instrument or for any postal purpose.

(2) Where two or more adhesive stamps are used to denote the stamp duty upon an instrument each and every stamp is to be defaced in manner aforesaid.

(3) Every person who, being required by law to deface an adhesive stamp, neglects or refuses duly and effectually to do so in the manner aforesaid shall incur a fine of £10. [See Ordinance No. 40, 1904, § 2, following.]

14. Where the duty is denoted by adhesive stamps, the following provisions shall apply :—

(1) The stamps on all instruments registered in the Registry of Deeds or other Registration Office, or which are executed by or before the Registrar of Deeds or other Registration Officer, shall be defaced by the Registrar of Deeds or other Registration Officer.

(2) The stamps on notarial instruments, other than such as are included in the last preceding sub-section, shall be defaced by the notary by or before whom they are passed.

- *(3) The stamps on all other instruments, unless otherwise provided for by any Law, shall be defaced at the time of execution by the party who is liable under this Proclamation to stamp such instrument.
- (4) Any person, being a party to any instrument liable to stamp duty, or entitled to act thereunder, who, having accepted such instrument without its being duly stamped, thereafter affixes, or causes to be affixed, any stamp to the same with intent to make it appear that such instrument was duly stamped as required by this Proclamation, shall be liable to a fine of £100. [This section is amended by Ordinance No. 40, 1904, § 3, following.]

15. (1) A stamp which by any word or words on the face of it is appropriated to any particular description of instrument is not to be used, or if used is not to be available, for an instrument of any other description.

(2) An instrument falling under the particular description to which any stamp is so appropriated as aforesaid is not to be deemed duly stamped unless it is stamped with the stamp so appropriated.

16. No instrument which is required by this Proclamation to be stamped shall be available for any purpose whatever, saving express provision to the contrary, unless the same is duly stamped as provided in this Proclamation, and in particular no such instrument which is not so stamped shall be produced or given in evidence or be made available in any Court in this Colony, except—

- (a) in criminal proceedings;
- (b) in any proceeding by, or on behalf of, the Government for the recovery of any stamp duties on such instruments, or any penalties alleged to have been incurred by reason of such instrument not being duly stamped;

* See Ordinance 14 of 1902, § 1, where the duty of defacing adhesive stamps on documents not stamped on execution but subsequently stamped is imposed on the Receiver of Revenue; and see also Govt. Notice 48 of 1903 (*Gazette*, 30th January, 1903, p. 274) as to defacement of stamps on powers of attorney given to pass Bonds or Deeds of Transfer.

- (c) in other proceedings, upon payment by the party producing or tendering such instrument in evidence, by way of penalty of such sum as the Court may direct, not being less than three times the original stamp duty, and subject to the instrument being stamped with the stamps which ought to have been originally affixed. The stamps shall be defaced, and the payment of such penalty shall be recorded on the instrument by the Registrar or other officer of the Court.

Provided always that—

- (1) When any such instrument is produced or given in evidence by or on behalf of the Crown, or any officer of the Government acting as such, no penalty or fine or stamp duty shall be deemed to be imposed upon or payable by the Crown or by such officer.
- (2) The foregoing proviso shall not exempt any other person from any liability in respect of such instrument.
- (3) Save where other express provision is made in this Proclamation, it shall be lawful for the Comptroller of the Treasury to cause to be stamped after the execution thereof any instrument which through inadvertence and without intent to evade payment of the proper duty has not been duly stamped on payment of the unpaid duty and a penalty not less than three times the amount of such unpaid duty. Such penalty shall be denoted by means of stamps, to be affixed by the officer who stamps the instrument, and to be defaced by him, together with the stamps denoting the duty, in the manner prescribed by this Proclamation. [See Ordinance No. 40, 1904, § 5, following.]

17. The persons liable to stamp the several instruments mentioned shall be the persons respectively designated in this section, and any person, being liable to stamp any such instrument, who executes and delivers the same without duly stamping it, shall, except in cases where other express provision is made in this Proclamation, be liable to a penalty not exceeding £50.

- (1) *Bill of Exchange and Promissory Note*.—The drawer or maker thereof.
- (2) *Bond*.—The person who makes or passes the same.
- (3) *Lease*.—The lessor.
- (4) *Policy of Life Insurance*.—The person or Company issuing the same.
- (5) *Receipt*.—The person giving it.
- (6) In the case of other instruments, the person executing same. [See Ordinance No. 40, 1904, § 4 (1), following.]

18. Save where other express provision is made by this Proclamation in relation to any particular instrument—

- (a) any instrument which has been first executed at any place out of this Colony may be stamped at any time within 21 days after it has been first received in this Colony by the person receiving it, being one of the parties thereto, or entitled to act thereunder;
- (b) in such case as above a note shall be made on the instrument by the party stamping it of the true date of receiving it, and he shall forthwith deface such stamps in manner provided by this Proclamation, unless the instrument is one on which the stamps should be defaced by a Notary or Registration Officer.

19. No instrument requiring to be stamped before registration shall be registered unless it is duly stamped, and if any person whose office it is to enrol, register or enter in or upon any rolls, books or records any instrument chargeable with duty enrolls, registers or enters any such instrument not being duly stamped, he shall incur a fine of £10.

20. (1) For the purposes of this Proclamation the expression “bill of exchange” includes—

An unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to bearer.

An unqualified order to pay coupled with—

- (a) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount; or
- (b) a statement of the transaction which gives rise to the bill; or
- (c) a statement on the bill that it is drawn against specified documents attached thereto for delivery on acceptance or on payment of the bill, as the case may be; or
- (d) a statement on the bill that it is drawn under or against a specified letter of credit or other similar authority;

is to be deemed an unconditional order.

(2) A cheque is a bill of exchange drawn on a banker payable on demand.

The duty of one penny upon a bill of exchange payable on demand or at sight or presentation may be denoted by an impressed stamp.

21. (1) For the purposes of this Proclamation the expression "promissory note" includes any document or writing (except a bank note) containing a promise to pay any sum of money.

(2) A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed a promissory note for that sum of money.

22. Every person into whose hands any bill of exchange or promissory note drawn or made out of this Colony comes in this Colony before it is stamped shall before he presents for payment or endorses, transfers or in any manner negotiates or pays the bill or note affix thereto a proper adhesive stamp or proper adhesive stamps of sufficient amount and deface every stamp so affixed thereto in manner required by this Proclamation.

Provided as follows :—

- (a) if at the time when any such bill or note comes into the hands of any *bonâ fide* holder there is affixed thereto an adhesive stamp effectually defaced, the stamp shall, as far as relates to the holder, be deemed to be duly defaced, although it may not appear to have been affixed or defaced by the proper person.
- (b) If at the time when any such bill or note comes into the hands of any *bonâ fide* holder there is affixed thereto an adhesive stamp not duly defaced, it shall be competent for the holder to deface the stamp as if he were the person by whom it was affixed, and upon his so doing the bill or note shall be deemed duly stamped, and as valid and available as if the stamp had been defaced by the person by whom it was affixed.

But neither of the foregoing provisos is to relieve any person from any fine or penalty incurred by him for not defacing an adhesive stamp.

23. A bill of exchange or promissory note which purports to be drawn or made out of this Colony is for the purpose of determining the mode in which the stamp duty thereon is to be denoted to be deemed to have been so drawn or made although it may in fact have been drawn or made within this Colony.

24. (1) Every person who issues, endorses, transfers, negotiates, presents for payment or pays any bill of exchange or promissory note liable to duty and not being duly stamped shall incur a fine of £50, and the person who takes or receives from any other person any such bill or note, either in payment or as a security or by purchase or otherwise, shall not be entitled to recover thereon or to make the same available for any purpose whatever.

(2) Provided that if any bill of exchange payable on demand or at sight or on presentation is presented for payment unstamped, the person to whom it is presented may affix thereto an adhesive stamp of one penny and deface the same as if he had been the drawer of the bill, and may thereupon pay the sum in the bill mentioned and charge the duty in account against the person by whom the bill was drawn or deduct the duty from the said sum, and the bill, in so far as respects the duty, is to be deemed valid and available.

(3) But the foregoing proviso is not to relieve any person from any fine or penalty incurred by him in relation to such bill. [See Ordinance No. 40, 1904, § 4 (1), following.]

25. When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of a set any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

26. (1) For the purposes of this Proclamation the expression "Broker's Note" means a note sent by a broker or agent to his principal advising him of the sale or purchase of any marketable security.

(2) Where a note advises the sale or purchase of more than one description of marketable security the note shall be deemed to be as many broker's notes as there are descriptions of stock or security sold or purchased.

(3) Every adhesive stamp on a broker's note is to be defaced in manner prescribed by this Proclamation by the person by whom the note is executed.

27. (1) Any person who effects any sale or purchase of any marketable security as a broker or agent shall forthwith make and execute a broker's note and transmit the same to his principal, and in default of so doing shall incur a fine of £20.

(2) Every person who makes or executes any broker's note chargeable with duty and not being duly stamped shall incur a fine of £20.

(3) No broker, agent or other person shall have any legal claim to any charge for brokerage, commission or agency with reference to the sale or purchase of any stock or marketable security mentioned or referred to in any broker's note unless the note is duly stamped.

(4) The duty of one shilling upon a broker's note may be added to the charge for brokerage or agency.

28. (1) Every letter or power of attorney for the purpose of appointing a proxy to vote at a meeting is to specify the day upon which the meeting at which it is intended to be used is to be held, and is to be available only at the meeting so specified and any adjournment thereof.

(2) The duty of one penny may be denoted by an impressed stamp.

(3) Every person who makes or executes or votes or attempts to vote under or by means of any such letter or power of attorney, not being duly stamped, shall incur a fine of £50, and every vote given or tendered under the authority or by means of the letter or power of attorney shall be void.

29. For the purposes of this Proclamation the expression "policy of life insurance" means a policy upon any life or lives, or upon any event or contingency relating to or depending upon any life or lives, except a policy of insurance against accident.

30. Every person who—

(1) receives or takes credit for any premium or consideration for any life insurance and does not within one month after receiving or taking credit for the premium or consideration make out and execute a duly stamped policy of insurance; or

(2) pays or allows in account, or agrees to pay or allow in account, any money upon or in respect of any policy of life insurance which is not duly stamped;

shall incur a fine of £20.

31. (1) For the purposes of this Proclamation the expression "receipt" includes any note, memorandum, or writing whereby any money or any bill of exchange or promissory note for money is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand or any part of a debt or demand is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person.

(2) The duty upon a receipt may be denoted by an impressed stamp.

32. If any person—

- (1) gives a receipt liable to duty and not duly stamped;
or
- (2) in any case where a receipt would be liable to duty
refuses to give a receipt duly stamped; or
- (3) upon a payment to the amount of £1 or upwards
gives a receipt for a sum not amounting to £1, or
separates or divides the amount paid with intent
to evade the duty;

he shall incur a fine of £10.

33. (1) A statement of the amount which is to form the nominal share capital of any company to be registered with limited liability shall be delivered to the Registrar of Companies, and a statement of the amount of any increase of registered capital of any company now registered or to be registered with limited liability shall be delivered to the said Registrar, and every such statement shall be charged with an *ad valorem* duty of 7s. 6d. for every £100 and any fraction of £100 over any multiple of £100 of the amount of such capital or increase of capital, as the case may be.

(2) In the case of neglect to deliver such a statement as is hereby required to be delivered, the company shall be required to pay to His Majesty in his Colonial Government, in addition to the duty, a sum equal to £10 per centum upon the amount of duty payable, and a like penalty for every month after the first month, during which the neglect shall continue.

(3) The provisions of this section shall also apply to any company which has registered any capital or increase of capital since the first day of September, 1900, under Government Notice No. 129 of 1901. Provided that where any such company has been registered, or where any increase of capital has been registered in terms of the said notice, on a date prior to the taking effect of this part of this Proclamation, the provisions of this section shall be deemed to have been complied with by payment of the amount for which security has been given or required by the said notice.

34. (1) When any joint stock company, formed or established in this Colony, propose to issue any loan capital, they shall before the issue thereof deliver to the Comptroller of the Treasury a statement of the amount proposed to be raised.

(2) Subject to the provisions of this section, every such statement shall be charged with an *ad valorem* duty of 7s. 6d. for every £100 and any fraction of £100 over any multiple of £100 of the amount proposed to be raised.

(3) On its being shown to the satisfaction of the Comptroller of the Treasury that the stamp duty payable in respect of a mortgage has been paid on any document securing the loan capital proposed to be issued, the amount of such stamp duty shall be deducted from the sum payable under this section.

(4) If any company neglect to deliver a statement, or fail to pay the duty in compliance with this section, they shall be liable to pay to His Majesty in his Colonial Government, in addition to the duty, a sum equal to 10 per centum upon the amount of the duty payable, and a like penalty for every month after the first month, during which the neglect or failure continues.

(5) In this section the expression "loan capital" means any debenture stock, or any capital raised by any company which is borrowed or has the character of borrowed money, whether in the form of stock or in any other form, but does not include an overdraft at a bank, or other loan raised for merely a temporary purpose, for a period not exceeding twelve months.

35. In lieu of the stamp duty of one penny on bank notes imposed by Article 10 of Law No. 2 of 1893, there shall be paid on or before the 15th of January of every year, by every bank issuing notes in this Colony, a duty of 5s. for every £100 or fraction thereof of the average amount of the notes circulated by such bank during the preceding year, which amount shall be estimated at the average circulation throughout such year as shown by the returns rendered by such bank in accordance with the aforesaid Law No. 2 of 1893.

36. Every person who does, or causes, or procures to be done, or knowingly aids, abets, or assists in doing any of the acts following: that is to say—

- (1) forges a die or stamp;
- (2) prints or makes an impression upon any material with a forged die;
- (3) fraudulently prints or makes an impression upon any material from a genuine die;

- (4) fraudulently cuts, tears, or in any way removes from any material any stamp with intent that any use should be made of such stamp or of any part thereof;
- (5) fraudulently mutilates any stamp with intent that any use should be made of any part of such stamp;
- (6) fraudulently fixes or places upon any material or upon any stamp, any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn, or in any way removed from any other material, or out of or from any other stamp;
- (7) fraudulently erases, or otherwise, either really or apparently, removes from any stamped material any name, sum, date, or other matter, or thing whatsoever thereon written, with the intent that any use should be made of the stamp upon such material;
- (8) knowingly sells, or exposes for sale, or utters or uses any forged stamp or any stamp which has been fraudulently printed or impressed from a genuine die;
- (9) knowingly and without lawful excuse (the proof whereof shall lie on the person accused) has in his possession any forged die or stamp, or any stamp which has been fraudulently printed or impressed from a genuine die, or any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise either really or apparently removed;
- (10) fraudulently removes or causes to be removed from any instrument any adhesive stamp, or affixes to any other instrument or uses for any postal purposes any adhesive stamp which has been so removed, with intent that the stamp may be used again;
- (11) sells, or offers for sale, or utters any adhesive stamp which has been so removed, or utters any instrument having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid;

shall be guilty of an offence against this Proclamation, and shall on conviction be liable to be imprisoned for any term not exceeding seven years.

37. Every person who without lawful authority or excuse (the proof whereof shall lie on the person accused) purchases or receives or knowingly has in his possession or custody—

- (a) any paper manufactured or provided for the purpose of making or impressing stamps by or for the proper authorities before the same shall have been duly stamped and issued for public uses; or
- (b) any plate, die, dandy-roller, mould, or other implement;

shall be guilty of an offence, and shall be liable on conviction to be imprisoned, with or without hard labour, for any term not exceeding two years.

38. On sworn information that there is just cause to suspect any person of being guilty of any of the offences contained in the two preceding sections, or to suspect that any stamps, either forged, stolen, or fraudulently obtained, are in any place or in the possession or custody of any person, any Magistrate or Justice of the Peace, or any other officer who may be authorised to issue a search warrant, shall be entitled to issue a search warrant authorising any police constable or proper officer to search any such suspected person or any place belonging to or occupied by the suspected person, or where he is suspected of being or having been in any way engaged or concerned in the commission of any such offence, or of secreting any machinery, implements or utensils applicable to the commission of any such offence, or where such machinery, implements or utensils, or any stamps stolen, forged or fraudulently obtained may be, and if upon such search any of the said several matters and things are found, the same may be seized and carried away, and shall afterwards be delivered to the Magistrate of the district, who shall have custody thereof until the same be dealt with otherwise by law.

39. Any matters or things so seized shall be adjudged to be forfeited to the Crown by the Court or the Magistrate having

jurisdiction as to such offences, and thereafter shall be dealt with as the Comptroller of the Treasury may direct—

- (a) if they be forged or fraudulently imprinted stamps, or if they be any die, stamp, implement or material which it is one of the said offences to make or possess or use;
- (b) if they be stamps stolen or improperly obtained, or are reasonably suspected of having been stolen or improperly obtained, unless the person who has possession or custody of them shall satisfactorily account for such possession or custody; provided, however, that nothing herein contained shall affect the rights of any person otherwise entitled in law to such stamps, or the possession or custody thereof.

40. If any forged stamps are found in the possession of any person appointed to sell and distribute stamps, or being or having been licensed to deal in stamps, that person shall be deemed and taken, unless the contrary is satisfactorily proved, to have had the same in his possession knowing them to be forged, and with intent to sell, use or utter them, and shall be liable to the punishment imposed by law upon a person selling, using, uttering, or having in possession forged stamps knowing the same to be forged.

41. Where stamps are seized under a warrant the person authorised by the warrant shall, if required, give to the person in whose custody or possession the stamps are found an acknowledgment of the number, particulars and amount of the stamps, and permit the stamps to be marked on the back before the removal thereof.

42. Any duty or fine or penalty imposed by this Proclamation shall be a debt due to His Majesty in his Colonial Government, and may be recovered by action in any competent Court.

43. This Proclamation shall be cited as "The Stamp Duties Amendment Proclamation, 1902," and shall, except as regards §§ 33 and 34, take effect from and after the 15th of April next. The aforesaid sections shall take effect on the publication of this Proclamation.

FIRST SCHEDULE.

LAWS REPEALED.

<i>Law.</i>	<i>Extent of Repeal.</i>
Law No. 2 of 1871	Article 7.
Law No. 5 of 1874	So much of Article 12 as required payment of sums of £10, £20, £30, as the case may be, on the registration of companies with limited liability.
Volksraad Resolution—	
No. 114, 22nd May, 1875 ...	The whole, with the exception of such portion thereof as relates to the stamps on the appointment of surveyors and the admission of doctors and apothecaries.
Law No. 5 of 1891	The whole.
Law No. 7 of 1892	The whole.
Law No. 13 of 1898... ..	The whole.
Proclamation Transvaal No. 39 of 1901	The whole.

SECOND SCHEDULE.

STAMP DUTIES ON INSTRUMENTS.

AFFIDAVIT AND SWORN DECLARATION	£0 2 6
ANTE-NUPTIAL CONTRACT	1 0 0
BILL OF EXCHANGE payable on demand or at sight on presentation	0 0 1
BILL OF EXCHANGE of any other kind whatsoever (except a Bank Note) and Promissory Note of any kind whatsoever (except a Bank Note) drawn or expressed to be payable or actually paid or endorsed, or in any manner negotiated in this Colony—	
When the amount or value of the money for which the Bill or Note is drawn or made does not exceed £10	£0 0 1
Exceeds £10 but does not exceed £50	0 0 6
“ £50 “ “ “ £100	0 1 0
For every £100 and also for every fractional part of £100 of such amount or value	0 1 0
BOND, including Mortgage Bond, Deed of Security passed before a Notary, Deed of Kinderbewys—	
Where the amount does not exceed £20	£0 1 0
Exceeds £20 but does not exceed £50	0 2 6
“ £50 “ “ “ £100	0 5 0
For every £100 and also for every fractional part of £100 of such amount or value	0 5 0

BROKER'S NOTE for or relating to the sale or purchase of any stock or marketable security £0 1 0

CHEQUE. See Bill of Exchange.

LEASE of any land, building or stand—

- (a) When the lease is for a period not exceeding one year or is renewable indefinitely, but terminable at the will of the lessor—

When the rent does not exceed £10 per annum	£0 1 0
Exceeds £10 but does not exceed £20 per annum	0 2 0
„ £20 „ „ „ £50 „	0 5 0
„ £50 „ „ „ £100 „	0 10 0
„ £100 per annum, for every complete £100	0 10 0

- (b) When the lease is for a period exceeding one year, but not exceeding ten years, duty shall be charged at the same rate as in (a) on a sum equal to the rent multiplied by half the number of years for which the lease extends; and for this purpose every broken portion of a year shall be deemed to be an entire year.
- (c) When the lease is for a period exceeding ten years, but not exceeding twenty-five years, duty shall be charged at the same rate as in (a) on the whole amount of the rent payable during the period of the lease.
- (d) When in any of the cases mentioned above a sum of money is paid as further consideration for the lease not being by way of rent, an additional duty of one per cent. shall be payable on the value of such further consideration.

The foregoing provisions as to lease are *repealed* by Ordinance 40, 1904, § 6 (1), following, and its provisions are replaced by § 6 (1) of that Ordinance.

NOTARIAL PROTEST OF A BILL OR NOTE £0 5 0

NOTARIAL CERTIFICATE of the presentation of a Bill or Note ... 0 2 6

As to notarial instrument, see Ordinance 40, 1904, § 7, following.

POLICY OF LIFE INSURANCE—

Where the sum insured does not exceed £1,000, then for every £100 and any fractional part of £100 of the amount insured £0 1 0

Exceeds £1,000, for every £100 and any fractional part of £100 of the amount insured 0 2 6

POWER OF ATTORNEY—

- (1) For the sole purpose of appointing or authorising a proxy to vote at any meeting, poll, ballot, or the like, at which votes may be given by proxy, whether the persons named in such instrument be one or more £0 0 1
- (2) For any special purpose or thing (*repealed*) ... 0 1 0
- (3) To act generally for the grantor (*repealed*) ... 1 0 0
- (4) Of any kind whatsoever not hereinbefore described (*repealed*) 0 5 0

See Ordinance 40, 1904, § 6 (2), following.

RECEIPT given for or upon the payment of money amounting to £1 or upwards 0 0 1

EXEMPTIONS FROM STAMP DUTY.

AFFIDAVIT AND SWORN DECLARATION.

Any affidavit or sworn declaration required by law, or by any public official authorised thereto, for purposes connected with the payment of any tax or duty to the Colonial Treasury.

BILLS OF EXCHANGE—

- (1) Bill of Exchange drawn by any banker in this Colony upon any other banker therein, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers.
- (2) Bill of Exchange drawn by or upon the Colonial Treasury, or upon any sub-accountant of the Colonial Treasury, or upon any public account.
- (3) Coupons or warrants for interest or dividends attached to and issued with any security or share certificate.
- (4) Order addressed by any banker to another banker with whom is kept any account into which public revenue is paid, authorising the transfer of money from the account of such first-named banker to such revenue account.

BONDS—

- (1) Bond given by or on behalf of any officer in the employment of the Colonial Government in respect of the discharge of his official duties.
- (2) Bond given in respect of the payment of Customs Duty or for public revenue.

RECEIPTS—

- (1) Receipts given by any Receiver of Revenue, or other public officer, in respect of any tax or duty paid to him, or in respect of any money received by him in the course of his official duties.
- (2) Receipt on Post Office Orders or Money Orders issued under the Regulations made by the Government in that behalf.
- (3) Receipt for wages or salary paid by any department of the public service of the Colony to any official, or for witnesses' expenses in a criminal trial.
- (4) Receipts given for money deposited in a bank or with any banker to be accounted for, and expressed to be received of the person to whom the same is to be accounted for.
- (5) Acknowledgment by any banker of the receipt of any Bill of Exchange or Promissory Note for the purpose of being presented for acceptance or payment.

ORDINANCE NO. 40, 1904.

To further amend the Stamp Duties Amendment Proclamation, 1902.

1. (1) Whenever any notarially executed instrument chargeable with stamp duty under the Stamp Duties Amendment Proclamation, 1902, or any other law, the stamps denoting such duty

shall be affixed at or before execution of such instrument to the original or the first grosse thereof, or in the case of any such instrument executed in duplicate or triplicate to such duplicate original or triplicate original, and such stamps shall be duly defaced by the notary before whom such instrument aforesaid is executed.

(2) Whenever any such instrument aforesaid shall be registered in any registration office, the original or first grosse or duplicate original (as the case may be) shall be filed with the registration officer, bearing the stamps affixed as aforesaid, and such registration officer shall endorse on the other grosse or triplicate original (as the case may be) lodged for registration a certificate that the instrument filed with him as aforesaid bears the stamps required by law.

(3) A notarially executed instrument shall, for the purposes of this section, include also any such instrument as is mentioned in § 37 of the Deeds Proclamation, 1902.

2. Notwithstanding anything contained in § 13 of the Stamp Duties Amendment Proclamation, 1902, or any law amending the same, any registration officer or other officer of any department of the public service, charged with the duty of defacing stamps, or any banker, may deface the stamps on any instrument in such manner as may be from time to time prescribed by the Colonial Treasurer by regulations published under notice in the *Gazette*.

3. Section 14 of the said Proclamation shall be and is hereby amended: (a) by the insertion in sub-section (1) thereof, immediately after the word "instruments," of the words "other than notarially executed instruments"; (b) by the omission from sub-section (2) thereof of the words "other than such as are included in the last preceding sub-section."

4. (1) Notwithstanding anything in §§ 13, 14, 17, or 24 of the said Proclamation contained, whenever any bill of exchange or promissory note liable to stamp duty has been executed and delivered without being duly stamped, or if any stamp affixed thereto has not been duly defaced, as required by law, such instrument may be duly stamped, or any stamp affixed thereto may be duly defaced, by the acceptor of such instrument, or by any banker, within a period of three days after any such instrument

shall have come into the hands of such person, and such person shall thereupon be deemed to be a person required by law to stamp such instrument, and shall be liable to any penalty prescribed by the said Proclamation for any omission or neglect to stamp such instrument or deface the stamps thereon within the period mentioned in this section.

(2) Any such instrument upon which any stamp has been affixed or defaced as in this section mentioned shall thereupon be an instrument duly stamped; provided that nothing herein contained shall exempt the drawer or maker of any such instrument from the duty imposed by the said Proclamation of duly stamping or duly defacing the stamps upon any such instrument, or from any penalty imposed by law for neglect of any such duty.

5. Section 16 of the said Proclamation shall be and is hereby amended by the addition of the following proviso to sub-section (3) thereof: "Provided always that if the amount of such penalty exceeds £20, the Colonial Treasurer may remit any part of the amount which exceeds the said sum."

6. The second schedule to the said Proclamation shall be and is hereby amended—

(1) By the repeal of the provisions as to lease of any land, building or stand, and by the substitution of the following provisions:—

Lease or agreement of lease of any land, building or stand for any periods less than twenty-five years.

(a) When the lease is for a period not exceeding one year, or for an indefinite period terminable at the will of the lessor:—

If the rent does not exceed £10 per annum	1s.
Exceeds £10 but does not exceed £20 per annum	2s.
Exceeds £20 but does not exceed £50 per annum	5s.
Exceeds £50 but does not exceed £100 per annum	10s.
Exceeds £100 per annum, for every £100 or part thereof...	10s.

together with duty at the rate of 10s. for every £100 or part thereof of any sum paid by way of further consideration, as is mentioned in paragraph (d) hereof;

- (b) when the lease is for a period exceeding one year, but not exceeding ten years, duty shall be charged at the same rate as in (a), on a sum equal to half the aggregate rents payable during the period of the lease, together with any such further consideration as is mentioned in (d);
- (c) when the lease is for a period exceeding ten years, but not exceeding twenty-five years, duty shall be charged at the same rate as in (a), on a sum equal to the aggregate rents payable during the period of the lease, together with any further consideration mentioned in (d);
- (d) when, in any of the cases mentioned in (a), (b) or (c), a sum of money is paid in further consideration for the lease, not being by way of rent, such amount shall be added to the amount of rent as aforesaid for the purpose of calculating the duty chargeable;
- (e) for the purpose of charging duty in any of the above-mentioned cases, the period of lease shall be taken to include any period or periods for which the lessee has the right of continuance or renewal, and in respect of which the lease in question serves as the agreement or contract between the parties, but if in any such case the lease is allowed to lapse, in conformity with the lease, by the option or will of the lessee, and ceases to be of force or effect, the Colonial Treasurer may refund the proportion of duty paid in respect of the remaining period on the claim being proved to his satisfaction;
- (f) in the case of an amending lease or agreement, by which the rent is increased or further consideration paid, the duty payable shall be the difference between the duty paid on the pre-existing lease and the duty payable if the increased rent or further consideration had been included therein;

- (g) where the rent or consideration is stated in kind or produce or otherwise than in money, the alternative money value as estimated between the parties shall also be stated for purposes of the duty, and duty shall be charged according to such money value;
- (h) in the case of any lease of land for agricultural or pastoral use and occupation, and such use and occupation are expressed as conditions of the lease (*sic*), the stamp duty chargeable shall be according to the scale provided under paragraph (a) of this sub-section;
- (i) the word "lease," for purposes of duty, shall include a sub-lease, or any cession of a lease, where such cession is not liable to transfer duty.
- (2) By the repeal of paragraphs 2, 3 and 4 under the head "Power of Attorney," and the substitution of the following provisions:—
- | | |
|---|------|
| (2) to do or perform any specific act or thing; if the power is granted by an individual mandant, or by two or more mandants, necessarily acting together in the performance of such specific act or thing | 1s. |
| (3) to do or perform more than one act (such acts being therein specified) or to act on behalf of two or more mandants not necessarily acting together as aforesaid | 5s. |
| (4) any special power not herein provided for | 5s. |
| (5) to act generally for the grantor | 20s. |
| (6) to act generally for the grantor otherwise than for effecting the transfer or hypothecation of immovable property | 10s. |
| (7) a power of substitution shall be subject to duty in like manner as a power of attorney; | |
| (8) the stamps on powers granted by more than one mandant may be cancelled by any one of them. | |

7. Section 4, sub-section (b) of the Stamp Duty Further Amendment Ordinance, 1902, shall be and is hereby amended by

the repeal of the substituted words in the said sub-section, and by the insertion of the following in lieu of such words:—

Notarial instrument or duplicate or triplicate
original thereof, not being in itself charge-
able with stamp duty; or grosse or copy of such
notarial instrument; or notarial attestation of
any instrument, or of any grosse, duplicate, or
copy thereof 2s. 6d.

8. No duty or fees payable in stamps shall be chargeable in respect of any instrument, or the registration thereof, if the duty or fees thereon would be paid and borne by the Colonial Government, or by any department thereof, and the Colonial Treasurer shall determine, in case of dispute, whether an instrument is exempt from duty or fees under this section, and his decision shall be final.

9. In this Ordinance the terms “bill of exchange” and “promissory note” shall have the same meanings as are assigned to them respectively by §§ 20 and 21 of the Stamp Duties Amendment Proclamation, 1902, and the term “banker” shall include a body of persons, whether incorporated or not, who carry on the business of banking in this Colony, and any manager or deputy-manager or other official in the employ of such body of persons, and acting in such capacity.

10. This Ordinance may be cited for all purposes as “The Stamp Duties Amendment Ordinance, 1904,” and shall be read as one with the Stamp Duties Amendment Proclamation, 1902, the Stamp Duties Further Amendment Ordinance, 1902, and any law amending the same.

PART 5.—REVENUE LAWS.

B.—LICENCES.

LAW No. 17, 1899.

1. Licences shall be levied for the exercise of the professions and trades and businesses specified in Articles 6 and 7 of this Law, for the amounts therein set forth and with a due regard to the following provisions.

2. Except where the contrary is in this Law specifically laid down, the licences shall not be granted for a longer or shorter time than up to and including the last day of December in the year in which the licence is issued.

3. The amount due for the licence shall be paid upon the issuing thereof and calculated from the commencement of the quarter in which the issue takes place, in proportion to the sum fixed for the licence.

4. Licences may be taken out per quarter, and paid for at an amount calculated in proportion to the sum fixed for the yearly licence, with an increase of 10 per cent.

5. All trade licences which are taken out for one year may be assigned by endorsement, save those for which security is given or which are of a personal nature or with regard to which special laws have provided or will provide.

Such assignment shall, however, not be lawful until expressly approved of in writing by the Comptroller of Licences.

6. The amount of the various licences is fixed as follows:—

						Per Year.		
						£	s.	d.
1.	Advocate (Repealed)	...	...	...	...	25	0	0
2.	Attorney	...	...	...	...	25	0	0
3.	Notary	...	...	...	...	10	0	0
4.	Agent	...	...	...	...	10	0	0
5.	Conveyancer	...	...	...	...	5	0	0
6.	Sworn Translator	...	...	...	...	3	0	0
7.	Sworn Valuator	...	...	...	...	2	0	0
8.	Land Surveyor	...	...	...	...	10	0	0
9.	Auctioneer	...	...	...	...	7	10	0
10.	General Agent, Broker, Book-keeper, or Accountant	...	...	...	...	7	10	0
11.	Physician (Repealed)	...	...	...	...	5	0	0
12.	Surgeon (Repealed)	...	...	...	...	5	0	0
13.	Dentist (Repealed)	...	...	...	...	5	0	0
14.	Banks, for each branch (Repealed)	...	...	...	...	150	0	0
15.	Boards of Executors or Companies of like kind, for each branch	...	...	...	...	50	0	0
16.	Pedlars and Hawkers	...	...	...	...	5	0	0
17.	Travelling trader domiciled here	...	...	...	...	20	0	0
18.	Travelling trader not domiciled here	...	...	...	...	30	0	0
19.	Traveller or representative of foreign trading houses (Repealed)	...	...	...	...	20	0	0
20.	Bakers, for each store or bake-house	...	...	...	...	2	0	0
21.	Butchers, for each store or butcher-shop	...	...	...	...	2	0	0
22.	Hotel-keeper in a town or village	...	...	...	...	20	0	0
23.	Proprietors of a boarding or lodging-house as follows:—							
	From 5 to 10 boarders	...	...	...	...	5	0	0
	More than 10 boarders	...	...	...	...	7	10	0
	(Excluded herefrom are boarding or lodging-houses for school children.)							
24.	Proprietor of a wayside hotel	...	...	...	...	12	0	0
25.	Kaffir eating house licences	...	...	...	...	5	0	0
	(Only to be issued for locations; no Kaffir eating houses will be permitted in the town or on the proclaimed goldfields.)							
26.	Keeper of public billiard table, per table	...	...	...	...	20	0	0
27.	Keeper of a bagatelle table, per table	...	...	...	...	5	0	0
28.	Miller or keeper of a mill whose grinding capacity is less than 5 muids in 24 hours	...	...	...	...	0	10	0
	Mills which can grind 5 muids in 24 hours	...	...	...	...	1	0	0
	Mills which can grind from 5 to 10 muids in 24 hours	...	...	...	...	2	0	0
	From 10 to 15 muids	...	...	...	...	4	0	0
	From 15 to 25 muids	...	...	...	...	7	0	0
	From 25 to 35 muids	...	...	...	...	10	0	0
	From 35 muids upwards	...	...	...	...	15	0	0
29.	Wood Sawyer	...	...	...	...	10	0	0
30.	Foreign Transport Riders, per wagon	...	...	...	...	8	0	0
31.	Pawnbrokers	...	...	...	...	40	0	0
32.	Keepers of coffee and tea rooms	...	...	...	...	3	0	0

7. For dealers, storekeepers, apothecaries or companies carrying on any trade business in this State not specified in Article 6 the amount of the yearly licence for each business or branch business shall be estimated according to a tariff rising in proportion to their sales as hereinbelow set out, the sales of products of agriculture and cattle breeding raised in the South African Republic being excluded in the making of such estimate:—

							Per Year.		
							£	s.	d.
For sale of	£2,500	or less	...	...	...	...	7	10	0
"	"	£2,500 to	5,000	...	...	...	10	0	0
"	"	£5,000	" 7,500	...	...	...	12	10	0
"	"	£7,500	" 10,000	...	...	...	15	0	0
"	"	£10,000	" 15,000	...	...	...	20	0	0
"	"	£15,000	" 20,000	...	...	...	25	0	0
"	"	£20,000	" 25,000	...	...	...	30	0	0
"	"	£25,000	" 30,000	...	...	...	35	0	0
"	"	£30,000	" 40,000	...	...	...	45	0	0

and so on for every £10,000 or portion thereof £10 more.

It shall be permitted to storekeepers to have a separate establishment under the one licence and on the one erf or stand for carrying on sales to natives, provided that only one set of books is kept.

8. The person or the company who has to take out a licence in terms of the previous section shall yearly before the 1st January hand in to the Landdrost, Civil Commissioner, Mining Commissioner, Responsible Clerk or Resident Justice of the Peace a sworn declaration setting out what amount he has to take out a licence for.

In the calculation thereof the average amount of the sales during the last three years may be taken, or where the business or the trade has not been established for so many years, during the time it has existed.

9. The person or the company who established a trading business as aforesaid shall commence by paying for a licence of the lowest class; but shall be obliged before the 15th December of the current year to supplement the same according to the above scale, until he reaches the class he ought to be ranked in, and he shall pay up the balance which is due by him.

9a. This obligation of making a supplementary payment shall operate in respect of all businesses where it appears that the amount of the sales exceeds the estimate of the declarant.

10. If it be proved that the estimate made by the declarant exceeds the amount of the sales the Government will, upon request, refund the amount overpaid, provided that application is made therefor within six months after lapse of the year for which the licence was taken out.

11. The Landdrost, Civil Commissioners, Mining Commissioners, Responsible Clerks, and Resident Justices of the Peace are charged with the signing and issuing of licences, with the exception of special marriage licences, which are signed and issued by the Under State Secretary.

12. The above-mentioned officials shall monthly transmit a complete list of the licences so issued, to the "Comptroller" appointed over their department, who shall monthly transmit a complete return to the Inspector-General of Import Dues.

The Government appoints Comptrollers of Licences, who shall be subject to the instructions of the Inspector-General of Import Dues.

13. The Comptrollers of Licences shall keep a register of all licences issued.

They shall be obliged after the end of each month to publish a list in the *Staatscourant*, containing the names of the persons to whom and the object and the time for which such licences have been granted, in addition to the date of issue.

14. The Comptrollers shall at all times have the right to order any holder of a licence to produce his licence.

Refusal to comply with such order shall be punished by a fine not exceeding £100, and, in default of payment, by imprisonment, with or without hard labour, for a term not exceeding six months.

15. The Comptrollers of Licences are authorised to enquire into the correctness of the facts alleged in the declaration made in terms of Article 8.

In the event of well-grounded suspicion or complaint they shall be competent to inspect the books of the declarant, or to take possession of the same in order that they may be inspected.

Any person who has such books in his possession or under his charge or control, and shall refuse in the case mentioned in the previous paragraph to exhibit or hand the same to the Comptroller of Licences, shall be punished by a fine not exceeding £300, and, in default of payment, by imprisonment, with or without hard labour, for a period not exceeding nine months.

16. No person or company shall exercise or carry on any calling or business, specified in Articles 6 and 7 of this Law, unless he be provided with the licence requisite therefor according to this Law.

17. Each contravention of this provision shall be punished by a fine of five times the amount of the licence due, and, in default of payment, by imprisonment, with or without hard labour, for a period not exceeding one year.

18. He who, being provided with a trading licence, allows or enables any person who is not entitled to carry on business to trade by means of the said licence, shall be punished by a fine not exceeding £500, or imprisonment, with or without hard labour, for a period not exceeding one year.

19. He who in the declaration which he is obliged to submit in terms of Articles 8 and 9 understates the amount of the sales shall be punished by a fine equal to five times the amount of licence money short paid due in respect of the amount understated, and, in default of payment, by imprisonment, with or without hard labour, for a period not exceeding one year.

20. In case any contravention punishable according to this Law is committed by a company or firm, each partner, manager or local director of the company shall be held responsible therefor.

21. The Government shall have the right to award a portion, not exceeding one-half, of any fine inflicted by and paid up under this Law, to the informant. If the informant is a salaried official, not more than one-fourth of the fine inflicted and paid shall be awarded him.

22. The Landdrosts, Special and Assistant Landdrosts, Judicial Commissioners and Resident Justices of the Peace shall have special jurisdiction in respect of all contraventions of this Law; the right of the State Attorney to bring an accused to trial before the High or Circuit Court being reserved.

23. The regulation of licences for the exercise of callings and businesses for which provision is made or shall be made by special Laws is left to be dealt with in terms of such Laws.

24. All licences which, before the coming into operation of this Law, were issued for the exercise of any calling or business as specified by Articles 6 and 7 of this Law, shall remain of effect for the period for which granted, and all legal provisions which were of effect before the passing of this Law shall continue to be applicable to such licences.

25. The removal or transfer of licences under this Law from one place or locality to another within the same district, town or village shall be effected without any additional payment of licence for the period for which the licence is taken out; provided the holder of the licence gives notice of such transfer or removal to the officer charged with the issue of licences, who in his turn gives notice thereof to the Comptroller of Licences.

26. Repealed by Ordinance 50 of 1902.

27. All Laws conflicting with this Law are hereby repealed, and more especially Law No. 21, 1898.

28. This Law shall come into operation immediately after publication.

ORDINANCE No. 50, 1902.

By § 2 of this Ordinance it is provided as follows:—

(1) Every company carrying on banking business shall take out a yearly licence which shall authorise the carrying on of such business at the head or principal office and at every branch office of such company in this Colony.

(2) The amount payable in respect of such licence shall be £500 when the paid-up capital does not exceed £500,000, and an additional sum of £1 in respect of each complete £1,000 of paid-up capital in excess of £500,000.

(3) Every such licence shall be taken out at the office of the Receiver of Revenue for the district in which the head or principal office of such company in this Colony is situated.

(4) The person applying for such licence shall at the time of application lodge with the Receiver of Revenue a certified statement signed by the chairman, manager or other responsible officer of the company in this Colony showing the paid-up capital of such company.

PART 5.—REVENUE LAWS.

C.—AUCTION SALES.

LAW No. 1, 1885.

For the Regulation of Auction Sales.

1. This Law may for all purposes be cited as the “Law on Auction Sales, 1885.”

2. From and after the date of the coming into operation of this Law it shall be lawful for any person complying with the regulations hereinafter mentioned to exercise the calling or carry on the business of an auctioneer, if he takes out a licence such as is mentioned and provided for in Law No. 17, 1899. Such licences shall contain the true name and the place of residence of the person taking out such licence, and if any person shall exercise the said calling or carry on the said business of auctioneer without having a valid licence at the time that he shall exercise such calling or carry on such business, or shall sell by auction as aforesaid, he shall, for every such offence, be liable to a fine not exceeding £100 sterling, to be inflicted by any competent Court, half of which shall be paid to the informant and the other half of which shall be paid into the Public Treasury of this Republic.

3. Nothing in this Law contained shall be taken to prevent the Government from appointing and employing any person to sell any Government movable property by public auction without its being necessary for him to take out an auctioneer's licence for the purpose or to account for the tax provided by Article 8.

4. Neither the Master of the High Court nor the High Sheriff shall be bound to take out auctioneers' licences for themselves or for the persons authorised by them to hold auction sales in the exercise of their official duties, but shall account for the ordinary percentage as provided in this Law.

5. The Messengers of the Court shall not be bound, when they hold public auctions in the exercise of their official duties, to take out licences for the purpose, but shall account for the ordinary percentage as provided in this Law.

6. No Market Master shall be bound to take out an auctioneer's licence or to account for the tax provided by this Law for any sale held by him of the ordinary produce which may, under any market regulations, be sold on the market.

7. All *bonâ fide* sales at bazaars for the benefit of church, school, mission or general public purposes may be held by the supporters of the cause proposed to be benefited without the ordinary auction licence and free from the percentage on the auction levied by the Government.

8. From and after the coming into operation of this Law, a tax of £2 10s. sterling shall be levied on every £100 sterling of the purchase price of all movable property sold by action within this Republic, and a tax of £1 sterling on every £100 sterling of the purchase price of all immovable property sold by auction within this Republic, save in the case of the exemption mentioned in Articles 3, 6 and 7, and these taxes of $2\frac{1}{2}$ per cent. on movable, and 1 per cent. on immovable property shall be accounted for to the Government by the auctioneer; provided always that the charges levied, imposed and recovered on the purchase price of any property, movable or immovable, sold by public auction in the estate of any deceased person, shall not exceed a tax of £1 sterling for every £100 sterling of any such purchase price.

9. No auctioneer's licence, as mentioned in Article 2 of this Law, shall be granted unless the person applying for such licence shall have first passed a surety bond before a Landdrost for the sum of £1,000 for himself and shall have obtained two sufficient sureties, inhabitants of this State and possessors of fixed property equal in value to the amount of such surety bond, each in the sum of £500, and such surety bond shall be as nearly as possible in the form annexed marked "A."

10. The auctioneer shall be bound to forward a report every month to the Landdrost of the district in which he carries on his business with regard to all auction sales held by him, written in ink, and, if necessary, certify the correctness of the same on oath, and pay into the Treasury the taxes due to the Government.

11. No auctioneer shall be entitled to sell any wine, distilled or fermented liquor, for which a liquor licence is required by law, and if he does so he shall be guilty of selling such liquor without licence and shall be liable to the fines provided by law therefor, except in cases where estates are being realised.

12. The State Attorney or any other qualified official shall be entitled to indict and prosecute for any contravention of this Law or of the conditions of the surety bond required by Article 9.

13. All Laws, regulations and Volksraad resolutions in conflict or incompatible with the provisions of this Law shall be and are hereby repealed.

14. This Law shall come into operation immediately after publication in the *Staatscourant*.

FORM "A."

On this..... day of.....
 18....., appeared before me, N. N., Landdrost of the district of.....
, in the South African Republic, A. B., residing at
, and C. D. and E. F., residing at.....
who declared themselves to be indebted to the
 public Treasury of the South African Republic, the said A. B. in the sum
 of £1,000 sterling, and the said C. D. and E. F. each in the sum of £500
 sterling, recoverable from them in law, on this condition, to wit, that
 if the said A. B. shall take out a licence to carry on the business of an
 auctioneer, and shall render an honest and accurate account of all sales
 to be held by him at such, as provided by law, and shall promptly pay
 the auctioneer's dues to the public Treasury of this State, and shall file
 the accounts and declarations required for such purpose, then and in
 such case this surety bond or undertaking shall be of no force or effect;
 but if the said A. B. shall neglect to do any one of such aforementioned
 things, then this surety bond or undertaking shall be of full force and
 effect against the said A. B., C. D., and E. F., and they shall be bound to
 pay the sums as abovementioned.

Thus done at....., on the date aforementioned.

(Signed) A. B.

„ C. D.

„ E. F.

Before me.....

Landdrost.

(Signed) G. M. }
 „ I. K. } *Witnesses.*

FIRST VOLKSRAAD RESOLUTION, dated 16th May, 1893. *Rc*
Auction Sales.

112. The First Volksraad, having regard to Government note, dated 2nd instant, with Executive Council Resolution, Article 122, thereby submitted, resolves to confirm the said Executive Council Resolution, and resolves that the following paragraph be added to Article 10 of Law No. 1, 1885:—

Should the auctioneer neglect to fulfil this duty, he shall be punished by a fine not exceeding £25, or in default of payment, imprisonment for a period not exceeding one month.

PART 5.—REVENUE LAWS.

D.—MARKETS.

LAW No. 8, 1888.

1. Market shall be held on the Market Square of every town by the Market Master appointed by the Government, except in cases where a Town Council has been established, in which case the appointment shall be made by the Town Council.

2. Market shall be held one hour after sunrise every day of the year, with the exception of Sundays and Church holidays. The first bell shall be rung half-an-hour after sunrise.

The market shall continue until everything that is brought to market shall have been offered for sale.

3. It shall not be lawful for any person during the market hours to ride about amongst and to the hindrance of those who are attending the market, or amongst the goods which are being sold.

4. Repealed by Proclamation 34 of 1901.

5. The Market Master personally shall neither bid nor purchase for himself, nor for any other person.

6. The entries made of the sale as well as the market notes shall be written in ink.

7. The Market Master shall sell all goods brought to the market by public auction, to the highest bidder. The sales shall be for cash.

8. The Market Master shall hand the seller a market note, which shall set out in columns :—The name of the seller, the name of the purchaser, the articles purchased and the price; and one column shall be left open on such market note, in which column, upon delivery of the article purchased, the purchaser or person who receives the same for him shall sign his name.

Upon exhibition of the market note so signed the seller shall be entitled to receive the amount from the Market Master.

[See Form "A" of market note annexed hereto.]

9. Purchasers shall pay the Market Master on the day of sale before 12 o'clock noon, at his office; in default whereof they shall pay 5 per cent. for collection.

The Market Master shall see that payment for the purchases is made (to him) in the ordinary course.

And it shall be lawful for him to decline to accept a bid from any purchaser who has refused to pay.

10. The Market Master shall keep proper books (in such form as may be prescribed for him) of all Government dues to be paid in by him, payable upon the articles sold on the market, which does shall amount to $2\frac{1}{2}$ per cent., except in respect of wines, spirituous liquors, etc., which come from beyond the limit of this State. [See Article 15, par. (m).]

11. Where an article which is put up for sale is not sold, the owner or person acting in his stead shall pay a sum of 2s. 6d. to the Market Master on behalf of the Government on every wagon, or vehicle, or otherwise upon the article put up.

The Market Master shall not knock down to the bidder the article put up, without obtaining the consent of the seller thereto; and in the event of a dispute between purchasers, the Market Master shall again put up the article.

12. The Market Master shall weekly pay in to the Landdrost of the district all moneys which shall accrue to the Government from the proceeds of the market, and shall at the same time submit his books for examination and approval.

13. The Market Master shall as far as possible prohibit all sales which are not permissible in terms of this Law.

14. No person, after having brought his products on to the Market Square, shall have the right to sell the same, before he shall first have put the same up to auction on the market, and until he shall have done so, no person shall have the right to purchase the same.

15. Products, etc., shall be sold as follows :—

- (a) meal, wheat, per muid of 200 pounds ;
- (b) mealies, bread mealies, pan salt, barley, oats, rye, Kaffir corn, beans, lentils, lime, per bag of 8 buckets ;
- (c) potatoes, sweet potatoes, onions, per bag of 8 buckets or submultiple thereof ;
- (d) wool, ivory, ostrich feathers, butter, pork and salt meat, dry fruits, etc., per pound ;
- (e) oats and green forage, per bundle ; chaff, per bale or bag ;
- (f) firewood, per load ;
- (g) coal, per 100 pounds or submultiple thereof ;
- (h) yellow-wood planks, beams and all sorts of timber, also wood for wagons, doors, windows, lintels and testers or hoods, by the foot, per piece or by the lot ; spars, per piece ; poles, Spanish reeds, per 100 ; thatching, per 100 bundles, with a diameter of 6 inches ;
- (i) oranges, apples, etc., per 100 ;
- (k) vegetables, in batches as the seller may desire ;
- (l) eggs, by the dozen ;
- (m) wine and spirituous liquors, per gallon. Import duty shall be paid on such liquors if imported from abroad, unless they are products of the Orange Free State. Such liquors may not be sold on the market before such import duty shall have been paid ;
- (n) horses, large stock (cattle), sheep, goats, pigs, poultry, etc., per head ;
- (o) any articles not mentioned here shall be sold as the Market Master may elect.

16. Every person who shall bring meal, grain, oats, butter, sweet potatoes, wool, vinegar, potatoes, wine, spirituous liquors, etc., to market, shall if required before the sale furnish the Market Master with a sample for comparison with what is offered for sale.

This sample need not be larger or greater than is required to enable a judgment to be formed of the quality of that particular kind.

No purchaser shall be obliged to take delivery of what is sold if it is worse than the sample.

In the event of dispute the Market Master shall decide; the losing party shall pay the Market Master's costs therein, not exceeding 10s.

An appeal may be made to the Landdrost, who shall summarily decide.

17. All products or things sold on the market shall be delivered by the seller at the house of the purchaser or at his place of business within the town. Immediately after the purchase, the purchaser shall be obliged and bound to point out in clear terms or cause to be pointed out to the seller the house or place within the town where the products or goods are to be off-loaded or delivered.

Should the purchaser not be present to take delivery of what is sold, it shall be off-loaded in the presence of competent witnesses or off-loaded at the market house for account of the purchaser.

18. The Market Master shall be entitled to decline to sell if he has reasonable grounds to suspect that what is brought to market is not the property of the person who offers it for sale.

The sale may, however, be effected upon condition that the proceeds shall remain for a certain time in the hands of the Market Master, or otherwise as the Landdrost shall deem fit.

He shall in such case immediately give written notice to the Landdrost, who shall without delay institute the necessary enquiry.

19. The Market Master shall receive a fixed salary from the Government, and shall give security for the due fulfilment of his duties.

He shall over and above the salary receive 2 per cent. of the market money.

20. Spoilt wares or wares deleterious to health, sick live stock, or horses with glanders brought to market, shall, upon complaint of the Market Master or any other person, be immediately removed from the market by the owner or person in charge thereof, and, in the event of refusal or negligence, such person shall be punishable according to the provisions of this Law.

21. All persons not being landowners bringing articles to market, and more especially firewood and lime, shall be obliged to exhibit a written pass from the owners of the farms from which the said articles come, and upon non-compliance therewith the articles shall be declared forfeited.

22. Any person who shall contravene one or more of the Articles of this Law shall be liable to a fine not less than 7s. 6d. and not exceeding £7 10s. sterling, to be imposed by the Landdrost according to the nature of the case, or, in default of payment, to imprisonment for a period not exceeding one month.

23. If the purchaser shall not duly point out the place of delivery in terms of Article 17 to the seller and the latter cannot find the purchaser, the seller shall be entitled to bring back the products or goods sold and not received to the market house; and if the purchaser shall not put in an appearance before 1 o'clock p.m., the Market Master shall receive the goods sold from the seller, and pay out the value thereof to the seller, who shall then be entitled to off-load the products or goods sold at the market house for account and risk of the purchaser, in presence of the Market Master or his lawful representative.

In such case the Market Master shall again offer the goods for sale the first ensuing market day, and the difference (if any) between the first and second sale and all damages and further costs thereby occasioned or connected therewith shall be made good by the first purchaser.

24. All laws and provisions in conflict with this Law are hereby repealed.

25. This Law shall come into operation immediately after publication.

FORM "A."—MARKET BRIEF.

No.

Date

Seller

No.

Town

Date

Seller

Purchaser.

Article.

Price.

Received by.

Purchaser

Article

Amount

PART 6.—ACCOUNTANTS.

ORDINANCE NO. 3 (PRIVATE), 1904.

To Provide for the Registration of Accountants in the Transvaal.

Whereas it is expedient to provide for the registration of persons publicly practising or entitled to practise publicly as accountants in the Transvaal, so as to distinguish qualified from unqualified persons; and whereas it is necessary to provide a qualification for admission to the Register of Accountants.

Be it enacted by the Lieutenant-Governor of the Transvaal, with the advice and consent of the Legislative Council thereof, as follows :—

1. After the passing of this Ordinance no person shall describe himself or hold himself out as an accountant, or as a public accountant, or as an auditor, or use any name, title, addition or description, or letters indicating that he is an accountant by profession, or a public accountant, or an auditor, whether by advertisement, by description in or at his place of business or residence, by any document or otherwise, unless he is registered as a public accountant in pursuance of this Ordinance; provided always that this section shall not prevent any person employed exclusively at a salary on accounts, and not carrying on business on his own account, from describing himself as an "accountant" in respect of or in relation to his occupation.

2. Any person not registered as a public accountant in pursuance of this Ordinance, and describing himself or holding himself out as an accountant, or as a public accountant, or as an auditor, so as to contravene any of the provisions of § 1 hereof, shall be liable to a fine not exceeding £100 for each offence, and, in default of payment, to imprisonment for a period not exceeding three months.

3. The persons registered as hereinafter provided are hereby constituted and incorporated into one body corporate, by name of "The Transvaal Society of Accountants," with perpetual succession, and the right to use a common seal, and to sue and be sued in its corporate capacity, and the said body shall be capable in law of taking and holding any real or personal property for the benefit and purposes of the Society, with power to dispose thereof, but so that the Society shall apply its profits or other income in promoting the objects of the Society, and shall not at any time pay any dividend to its members.

4. Upon the passing of this Ordinance there shall come into existence a Provisional Council, consisting of the following persons, namely:—Alexander Aiken, Robert Baikie, James Alexander Boyd, John Gordon Carter, John Dougall, Frederick Richard Lynch, John Hastings Muir, Howard Pim, Frank Raleigh, Charles Stuart, Samuel Thomson, Thomas Watson—who shall be the first members of the Transvaal Society of Accountants, and shall forthwith cause their names to be entered upon the register thereof. The Provisional Council shall, subject to the provisions of this Ordinance, exercise all the powers of the Society until the Council hereinafter mentioned shall come into office, and shall fill any casual vacancies in their number, subject to the approval of the Lieutenant-Governor.

5. Upon a day to be fixed by the Lieutenant-Governor, but not later than one month from the passing of this Ordinance, the Provisional Council shall meet at Johannesburg, and shall at such meeting elect a Chairman.

In the absence of the Chairman at any meeting, the members of the Provisional Council present shall elect one of their number to preside.

At any meeting of the Provisional Council five members personally present shall constitute a quorum, and a majority of the members present shall decide every question to be decided by such meeting, except admission to the register, which shall require a majority of the whole Council, and twenty-one days' notice shall be given of all meetings at which the admission of members is to be dealt with.

Subject to the provisions of this Ordinance, the Provisional Council are hereby empowered to regulate the proceedings at their meetings, and the mode of carrying on the business of the Society, and shall remain in office until six months from the date of passing of this Ordinance.

The Provisional Council shall have power to appoint a clerk or registrar, and such other officers as they may deem necessary for the purposes of this Society.

6. The Provisional Council shall open a register in which every person shall be entitled to be registered as a public accountant in pursuance of this Ordinance who proves to the satisfaction of the Provisional Council, within six months next after the passing he was resident in the Transvaal, and (a) was a member of the of this Ordinance, that at the date of the passing of this Ordinance Transvaal Branch of the Society of Accountants and Auditors of England, or the Society of Accountants in Edinburgh (incorporated by Royal Charter, 1854), or the Institute of Accountants and Actuaries in Glasgow (incorporated by Royal Charter, 1855), or the Society of Accountants in Aberdeen (incorporated by Royal Charter, 1867), or the Institute of Chartered Accountants in England and Wales (incorporated by Royal Charter, 1880), or the Institute of Chartered Accountants in Ireland (incorporated by Royal Charter, 1888), or the Society of Accountants and Auditors, England (incorporated 1885); or (b) was publicly and *bonâ fide* practising as a public accountant in the Transvaal at the date of the passing of this Ordinance; or (c) shall make written application to be placed on the register, and shall be considered by a majority of the Provisional Council a fit person to be admitted to the register, by virtue of his position and past experience.

7. Upon the expiration of six months from the date of the passing of this Ordinance no person shall be entitled to be registered as a public accountant, unless he shall prove to the satisfaction of the Council hereinafter mentioned that at the date upon which his application for registration is made he is resident in the Transvaal, and (a) is a member of any Society or Institute of Accountants, whose membership is declared to be sufficient by the bye-laws of the Society for the time being in force, or (b) shall have produced a certificate from the Council that he has passed the examinations from time to time prescribed by the bye-laws, and shall have satisfied the Council that he has had such practical experience in the business of a public accountant as under the bye-laws of the Society renders him admissible for registration.

8. On such day during the currency of the sixth month next after the date of the passing of this Ordinance as the Provisional Council shall appoint, the Provisional Council shall convene a meeting in Johannesburg of all persons whose names appear upon the register, at the date on which the notices convening such meeting are issued, and at such meeting the persons present shall proceed

to elect, in manner to be provided by the Provisional Council, a Council of twelve members, which shall come into office upon the expiration of six months from the date of the passing of this Ordinance, and thereupon the Provisional Council shall cease to exist. This Council shall hold office until the date of the annual general meeting following, upon which date the members of the Council shall retire from office, but shall be eligible for re-election.

9. No person shall be placed upon the register until he has paid such registration fees as shall be fixed by the Provisional Council or Council as the case may be.

10. The following act and practices, whether of commission or omission upon the part of any public accountant or auditor, shall be offences under the provisions of this Ordinance, and if found guilty by the Supreme Court of having committed or engaged in any one or more of such acts or practices, the said public accountant or auditor shall be liable to be suspended from practice for any period that may be decided on by the said Court, or to have his name removed from the register as hereinafter provided:—

- (a) allowing any person, not being a member of the Society, or in partnership with himself as a public accountant, to practise in his name as a public accountant;
- (b) directly or indirectly allowing a solicitor, broker, auctioneer, or other principal or agent, not being his partner, to participate in the profits of his profession, or directly or indirectly accepting any share of the profits from the professional work of a solicitor, broker, auctioneer, or other principal or agent, not being his partner, or any commission or bonus thereon; provided that nothing in this Ordinance shall be construed to prevent a registered public accountant from carrying on any other business in addition to that of accountancy;
- (c) signing accounts, statements, reports or other documents, purporting to represent any accountancy work performed by himself, which work shall not have been carried on under his personal supervision or direction;
- (d) directly or indirectly paying any person a commission for bringing him work, giving any person monetary or other consideration as a remuneration for bringing him work, or inducing other persons to give him work;

- (e) improperly obtaining or attempting to obtain work ;
- (f) performing any accountancy work in connection with any matter which is the subject of dispute or litigation, upon condition that only in the event of the said dispute or litigation ending favourably for the party for whom the work is performed shall payment be made for such work ;
- (g) conducting himself dishonourably in connection with any work performed by him as a public accountant or auditor ;
- (h) wilfully refusing or neglecting to carry out and perform any bye-law or order, lawfully adopted and established by the Society, regarding any point of professional practice ;
- (i) engaging in any practices or performing any acts similar to those practices and acts prohibited in the foregoing sub-sections.

11. For the purpose of enquiring into and exercising control over the conduct and behaviour of the members of the Society, the Council in meeting assembled shall be empowered to summon members of the Society and others as witnesses to appear before it ; to hear and take evidence, and to order the production of any books, documents and papers in the possession of such members. All evidence so taken shall be recorded in writing, and the chairman of the meeting aforesaid shall be empowered to administer oaths to the witnesses called to give evidence before the Council at such proceedings. Any member of the Society whose conduct is being enquired into shall be cited to appear before the Council to answer to any charge made, or to defend himself against any proceedings taken against him, and shall be entitled to produce evidence and call witnesses on his behalf.

12. In the event of any member of the Society being in the opinion of the Council guilty of any act of omission prohibited by this Ordinance or offending against any bye-law or regulation framed thereunder, the Council may call upon such member to show cause to the Supreme Court of this Colony why he should not be prohibited from practising as a public accountant, and why his name should not be removed from the register. All such proceedings shall be taken in the name of the Council of the Society. Upon the hearing of any such matter the Court may suspend such member from practice, either permanently or temporarily, and

remove his name from the register, or make such other order as may seem fitting, and may further make such order as to costs as may seem fit.

13. In case any member of the Society shall in consequence of the order of Court be suspended from or rendered incapable of practising as a public accountant in this Colony, such person shall, during such time as he is suspended or is incapable, cease to be a member of the Society.

14. No claim against the assets of the Society shall exist in the case of or be made by any person whose name has ceased to appear upon the register of the Society, or the executors, administrators, heirs or assigns of such person.

15. Every person whose name appears upon the register shall be entitled to style himself Registered Public Accountant (Transvaal).

16. The Council shall upon being elected to office forthwith frame rules and regulations for regulating the examinations or equivalents thereto which shall be required of applicants for registration, in pursuance of § 7 of this Ordinance.

17. The Council shall have power to do each and all of the following acts:—

- (a) to manage and superintend the affairs of the Society;
- (b) to appoint and remove any officers and servants of the Society, and to determine the duty, salary, and remuneration of the same;
- (c) to accept or refuse, for good cause, any application for registration made in pursuance of this Ordinance;
- (d) to hold examinations for applicants for registration, and to grant certificates to such persons as have satisfied the examiners in such examinations;
- (e) generally to exercise all the powers of the Society, except such powers as are expressly reserved by this Ordinance to the Society in general meeting.

18. There shall be held once in each year a general meeting of the Society, whereat every accountant upon the register, who is not in arrear with any subscription or sum payable by him to the Society, shall be entitled to be present and to vote. The quorum for such general meeting shall be fixed by the bye-laws.

Any question to be decided at such meeting shall be decided by a majority of the members present thereat.

The Council shall prepare, as at the 31st December in each year, an account of all moneys received and expended by the Society, and submit such account, duly audited, to the Society at such general meeting for discussion and approval. The officers of the Society shall be elected annually at this meeting.

It shall be lawful for any member or members of the Society at such meeting to move any resolution which is not inconsistent with the purposes and provisions of this Ordinance, provided that no member or members shall have the right to introduce to such meeting or submit for discussion by such meeting any act done by the Council, in pursuance of the power conferred by §§ 11, 12 and 17, sub-sections (c) and (d) of this Ordinance.

19. The Provisional Council shall forthwith prepare draft bye-laws of the Society, and shall convene on due notice a special general meeting of the Society in Johannesburg, to be held not later than six months from the date of this Ordinance, for the purpose of considering and, if approved, adopting the said bye-laws. The notice convening such meeting shall be sent to the registered address of each member of the Society not later than twenty-one days before the day appointed for such meeting, and shall be accompanied by a copy of the proposed bye-laws.

A majority of the members personally present at such meeting shall be sufficient to determine all matters to be decided thereat, and the non-receipt of the said notice or copy of the proposed bye-laws by any member or members shall not invalidate the proceedings at the said meeting, provided that twelve members be present thereat.

20. The Society may from time to time, subject to the approval of the Lieutenant-Governor, make bye-laws for any of the following purposes, provided such bye-laws be not inconsistent with the provisions of this Ordinance—

- (a) for regulating the conditions and mode of admission to the register of the Society;
- (b) for fixing the registration and other fees and the times for payment of the same;
- (c) for regulating the time, mode and place of summoning and holding ordinary and special general meetings, and the quorum to be present thereat, and the mode of voting, and the conduct of proceedings at any such meetings, and the regulations for the adjournment thereof;

- (d) for regulating the meetings of the Council and the quorum to be present thereat;
- (e) for regulating the number of members of the Council, and their periodical retirement, and the mode of nomination of members of the Society for election thereto, and the mode of filling casual vacancies thereon;
- (f) for regulating the service under articles of clerks of members of the Society, and the forfeiture of such articles for misconduct or other sufficient cause;
- (g) for regulating the times and places for holding examinations of applicants for registration, and the subjects and the manner of conducting or holding any such examinations, and for fixing a reasonable fee to be paid by applicants and others, and the conditions on which the examiners shall hold office, and the remuneration;
- (h) for regulating the mode of election or appointment of the president and two vice-presidents of the Council;
- (i) and generally such bye-laws as from time to time seem to the Society requisite for the better execution of this Ordinance, and the furtherance of the objects of the Society.

Such bye-laws and regulations shall, when adopted at a general meeting of the Society, and approved by the Lieutenant-Governor, and published in the *Gazette*, have the force of law, and shall be binding upon all members of the Society, in so far as the same are not in conflict with the terms of this Ordinance.

21. No alteration in the bye-laws as adopted at the special general meeting referred to in § 19 shall be made save by a majority of two-thirds of the members present at a special general meeting, convened for the purposes of sanctioning such alteration. Notice of such meeting, and of the alteration or alterations to be proposed thereat, shall be sent by post to the registered address of each member of the Society at least twenty-one days before the date fixed for the meeting, but the non-receipt of such notice by any member or members shall not invalidate the proceedings thereat.

22. This Ordinance may be cited for all purposes as the Accountants' Ordinance, 1904.

PART 7.—CARRIAGE OF GOODS.

In this chapter will be found a collection of the leading cases on the liability of common carriers, in which class, of course, are included railway companies which carry goods for hire. From a perusal of these cases it will be seen that the following are the main rules governing the subject:—

(1) Common carriers for hire are responsible for the value of all goods entrusted to them for carriage, and are only exempted by unavoidable accident. They are liable for even slight negligence.

(2) Common carriers may, however, limit their liability by special contract with the person entrusting goods to them for carriage. If a person signs a consignment note containing or referring to special conditions, he will be bound by such special conditions. If, before or at the time of delivery of goods to the carrier for carriage, the person so delivering goods has notice of any rules or regulations limiting the carrier's liability, he will be bound by such rules and regulations. Such notice will be implied from the delivery to such person of a note, ticket, or document clearly indicating that the liability is limited, or clearly referring to accessible rules and regulations limiting the liability.

(3) Where a railway is incorporated or made subject to a special Law or Statute, such Law or Statute in the first instance governs the liability. Thus the Central South African Railways are in the first instance governed by Ordinance No. 60, 1903, following. If the Ordinance does not apply, then the rules of the Common Law, found in the following cases, apply:—

LIABILITY—THEFT—NEGLIGENCE.—Benning was Thomas's agent to book and receive parcels to be forwarded by Thomas's post carts. A box of specie was delivered by the Oriental Bank to Benning to be forwarded by post cart, but the box was stolen by Benning's servant before it could be delivered to the post cart driver. The bank sued for and recovered the value of the specie from Thomas. It was decided that, under the circumstances, there had been negligence in the care of the specie, and that Benning was liable to Thomas for the loss thereof, but

not for the costs incurred in the action brought by the bank against Thomas (*Thomas vs. Benning*, B. 1878, p. 16). The Court held that Benning should have taken "such reasonable care in and about the custody of the box and the delivery of it to the plaintiff's driver as would be taken by a prudent man engaged in the same business."

LIABILITY—DAMAGES—VALUE.—Where goods are lost by a carrier the owner suing in Cape Colony is entitled to recover the value of such goods in Cape Colony, and is not restricted to the cost price of the goods in England (*Louw vs. Stewart*, B. 1878, p. 87).

FREIGHT—RATE OF PAYMENT.—The plaintiff entered into a contract with the defendant to carry goods and produce from the railway station "to any place within one mile of the said station" at 2s. 6d. per ton, and at an additional rate to all places beyond that distance. Certain wool was carted by plaintiff to wool-wash establishments within one mile of the station if the distance was measured in a straight line, but more than a mile by road. It was decided that the distance must be measured along the road which the carrier must necessarily travel, and that the plaintiff was consequently entitled to the additional rate. "The very essence of the contract is the actual distance which the plaintiff has to travel" (*Holland vs. Commissioner of Crown Lands*, B. 1877, p. 105).

SALE—DELIVERY—AGENT.—Where a vendor agrees to make delivery of the goods he has sold at a distant place, the carrier is the agent of the vendor to deliver, not of the purchaser to receive the goods (*Stephen Fraser & Co. vs. Clydesdale Collieries* [1903], T.H. 121).

DELIVERY OF GOODS—QUALIFIED RECEIPT.—If the checker of a railway, as common carriers, adds the words "not checked" on signing a consignment note, the document, in the absence of other evidence, is not binding as a receipt for delivery of the specific number of goods therein stated (*Woolfe & Co. vs. Central South African Railways* [1903], T.H. 76).

RAILWAY—PASSENGERS—NEGLIGENCE.—Railway companies are not "insurers, bound to warrant the safety of the passengers in any and at all events; but they are carriers, and as such they are bound to take every reasonable precaution to secure the safe transit of the passengers by their train" (*Durham vs. Capetown and Wellington Railway Co.*, B. 1869, p. 302).

LIMITING LIABILITY—NOTICE.—A carrier cannot escape from his legal obligations by issuing a public notice that he will not be responsible for loss or damage to goods carried by him. He must, in order to escape liability, show (1) that the owner of the goods saw the notice, and (2) that the owner consented to its terms. Even in the case of a special agreement with the owner of the goods that the goods are to be carried at his risk, the carrier will still be liable for gross negligence (*Naylor vs. Munnik*, 3 S. 187).

LIMITING LIABILITY—BILL OF LADING—EXCEPTIONS.—By the bills of lading certain goods shipped on a steamer were to be delivered in good order and condition, accidents and perils of the sea excepted. On transshipping the goods into lighters at the port of destination they were, by accident, and without any negligence on the part of the vessel, dropped overboard. It was decided that the case came within the exceptions to the bill of lading, and that the vessel was not liable (*Kafrarian Landing and Shipping Co. vs. Donald Currie & Co.*, B. 1879, p. 99). The Court held that the accident was really a peril of the sea.

LIABILITY—REMUNERATION—NEGLIGENCE.—In the foregoing case the bill of lading provided for certain exceptions. But where there is no such provision, and a person undertakes the carriage of goods, he is

liable for their loss through his negligence, even if he is not paid for carrying the goods. In *Sciama & Co. vs. Table Bay Harbour Board* (10 C.T.R. 145), the plaintiffs, carrying on business at Capetown, were the consignees of a parcel of ostrich feathers, which were sent to them by a Union Co. steamer from Mossel Bay. The parcel was delivered by the steamer to the captain of the tug "John Paterson," belonging to the Harbour Board, for conveyance to the shore. On the way to shore the feathers fell overboard. The tug was there for the ship's business, and it was customary to land feathers in this way. The Harbour Board was not paid for the conveyance of the feathers, but were paid by the Union Co. for the trip of the tug. The defendants gave their captain no authority to take cargo, and there was no contract whatever between them and the plaintiffs. It appeared that goods of the kind were only carried by the tug "to oblige the captains of the steamships." The Court found that with ordinary skill and care the accident might have been avoided, and that consequently the damage done to the feathers was occasioned by the negligence—although not gross negligence—of the Harbour Board's servants. The Court further found that "the previous course of dealing between all the parties was such as to justify the inference that the captain of the steamer acted and had authority to act on behalf of the plaintiffs in delivering the goods to the master of the tug, and that the master of the tug acted and had authority to act on behalf of the defendants in accepting the goods. In obliging the captain the master of the tug obliged the principal on whose behalf the captain was acting." The Court decided that though no payment was to be made for the conveyance of the goods, and therefore the defendants did not incur the liability of common carriers, they undertook a gratuitous mandate or agency, and "if they were guilty of negligence in carrying out the mandate they incurred a liability towards the owners of the goods, who are the principals on whose behalf the master of the ship acted." The Harbour Board was consequently held liable for the loss sustained.

From the foregoing case of *Sciama & Co. vs. Table Bay Harbour Board* it will be seen that, had the Harbour Board received payment for carrying the goods, they would have been in the position of common carriers. It is thus the receipt of payment for carriage which decides whether a person is a common carrier or not. According to this case, "if they had been common carriers, inevitable casualty or accident would alone have freed them from liability." But as gratuitous mandates they could not be held liable, except for negligence on the part of themselves or those employed by them. Such negligence existed in this case, and they were therefore held liable.

LIMITING LIABILITY—SPECIAL CONDITIONS—NOTICE.—It frequently happens that carriers seek to escape liability by relying on private regulations of their own limiting such liability. In each case, in order to escape liability, it must be shown that such regulations formed part of the contract between the parties. The following rules were laid down in *Stretton vs. Union Co.* (1 E.D.C., 315):—"If a person received a ticket and did not see it or know that there was any writing on the ticket, he is not bound by the conditions contained in the ticket; if he knew that there was writing, and knew or believed that the writing contained conditions, then he is bound by the conditions; if he knew that there was writing on the ticket, but did not know or believe that the writing contained conditions, nevertheless he would be bound, if the delivering of the ticket to him was in such a manner that he could see there was writing upon it containing conditions."

The foregoing case was that of a passenger, but the same rules apply whether the contract is to carry a passenger or to carry goods.

In *Zeederberg vs. Frank* (O.R. 1894, March, p. 125), plaintiffs were passengers, who took tickets by a coach belonging to defendants. After they had taken their seats in the coach, tickets were handed to them, on the back of which were regulations limiting the liability of the coach-owners in case of loss of luggage. The Court—the luggage having been lost—decided that plaintiffs were entitled to the full amount of damage sustained. "The public is not obliged to take notice of arbitrary private regulations, and cannot be presumed to have notice of them, for the regulations are private, and not imposed by public authority."

LIMITING LIABILITY—REGULATIONS—SIGNATURE.—In *Burger vs. Central South African Railways* ([1903], T.S. 571), Burger, through his duly authorised agent, delivered a box of books to the C.S.A. Railways at Johannesburg for carriage by rail to Grahamstown. The agent signed a consignment note, which was also signed by an official of the department, which stated on the face of it that it was issued subject to the goods traffic regulations in force on the railway. Under § 14 of these regulations the liability of the department was very materially limited in the case of loss or damage to goods entrusted to it, unless the value had been declared and the goods had been specially insured by the consignor. Burger read the note before the goods left Johannesburg, but not not make himself acquainted with the regulations. The goods were lost in transit. It was decided that though the facts proved established a strong *prima facie* case of negligence, and therefore of liability against the defendants, and though the regulations alluded to in the consignment note had not been annexed to it or printed upon it, yet the signatory was bound by the terms of the document he signed; that the special written contract signed by both parties limited the liability of the respondents to a certain definite amount, which they had duly tendered; and that they (the C.S.A. Railways) were therefore not liable to make good the full value of the articles lost. In this case the Court did not decide on the ground that the regulations must be presumed to have come under Burger's notice, but on the ground that by signing the consignment note he was bound by all the provisions which it contained or to which it referred.

LIMITING LIABILITY—REGULATIONS—NO SIGNATURE.—It will, however, be different where the consignor does not sign the consignment note. In that case he is not necessarily bound by the regulations. Thus, in *Central South African Railways vs. McLaren* ([1903], T.S. 727), McLaren delivered a package of a value exceeding £5 at the cloak-room of the Pretoria Railway Station, and received a ticket on which were the words, "The department is not responsible for any article exceeding the value of £5," printed in red ink diagonally across the ticket and partly covered by the clerk's entry of the description of the article deposited. McLaren knew that there was printing on the ticket, but did not know that this printing contained any conditions limiting the department's liability. His attention was not directed to the conditions, nor was any notice placarded in the cloak-room calling attention to the condition. The package was lost, and McLaren now sued for its value. It was held that the department had not done what was reasonably sufficient to give McLaren notice of the condition, and that he was entitled to recover the value of the package.

The liability of carriers by land is the same as that of carriers by water (*Tregidga & Co. vs. Sirewright*, 14 J. 81).

The foregoing cases define the general rules relating to carriers' liability. Such rules are, of course, subject to any regulations made by Statute Law. In the Transvaal the liability of the Central South African Railways is regulated by Statute, and what is provided for by Statute takes precedence of what is laid down by the foregoing rules made under the Common Law. Where the Statute Law and the cases under the Common Law conflict, the Statute Law governs the matter. Where the Statute Law is silent, the Common Law contained in the foregoing cases decides.

The Transvaal Railways (including the Central South African Railways) are regulated by Ordinance No. 60, 1903.

The following are the provisions of Ordinance No. 60, 1903, relating to the carriage of goods on the Transvaal Railways:—

ORDINANCE No. 60, 1903.

Transvaal Railways.

Sections relating to the carriage of goods, the liability of the railways carrying the same, and actions against the railways:—

10. (1) The consignor of property is presumed to be liable for the carriage, but if the contract between him and the Administration provides that the consignee shall pay it, and the Administration allows the consignee to take the property, it cannot afterwards recover the carriage from the consignor.

(2) The consignee of property is liable for the carriage and other charges, if he accepts the property with notice that the same are unpaid.

11. (1) If a consignee receives property at a place short of that appointed for the delivery, the Administration is entitled to a just proportion of the carriage, according to distance. If the Administration, being ready and willing, offers to complete the conveyance of the property, it is entitled to full carriage.

(2) If property is carried further or more expeditiously than was agreed upon between the parties, the Administration is not entitled to additional compensation, and cannot refuse to deliver it on the demand of the consignee, at the place and time of its arrival.

12. When the Administration does not deliver the property to the consignee or his agent personally, it must give notice to the consignee of the arrival of the property, and keep the same in safety upon its responsibility as a warehouseman. If the place of residence or business of the consignee be unknown to the Administration, it may give the notice by posting to the consignee a letter addressed to the consignee at the address given on the property or papers relating thereto.

13. If property is not removed or instructions for the disposal thereof are not given within fourteen days of the posting of the notice, the responsibility of the Administration in respect thereof shall cease. Any consignee or person entitled to receive the delivery of any property from the Administration shall have twenty-four working hours, free of expense, after notice of arrival has been posted or forwarded to him by the Administration, to remove the same from the trucks or other vehicles of the Administration, which twenty-four working hours shall be held to commence from such time as the truck or other vehicle containing such property is placed and kept by the Administration in a convenient and proper place for unloading, and it shall not be held to be a proper place for unloading unless it can be reached with suitable means of removing the property from the trucks or other vehicles, and reasonably convenient to the station at which it is usual to receive and unload property consigned to that station or place.

14. (1) If a person fail to pay on demand, made by or on behalf of the Administration, any carriage or other charge due from him in respect of any property, the Administration may detain the whole or any part of the property, or, if it has been removed from the railway, any of the property of such person then being in or thereafter coming into its possession.

(2) When any animals or goods have been detained under sub-section (1), the Administration may sell, in the case of perishable goods at once, and in case of other goods or of animals by public auction on the expiration of at least ten days' notice of the intended auction, published in one or more of the local newspapers, or when there are no such newspapers, in such manner as the High Commissioner may prescribe, sufficient of such animals or goods to produce a sum equal to the carriage or other charges, and all expenses of such detention, notice and sale, including in the case of animals the expense of the feeding, watering and tending thereof. Every such notice of sale shall state the name of the consignor and consignee, if known.

(3) Out of the proceeds of the sale the Administration may retain a sum equal to the carriage and other charges aforesaid, including any balance due in respect of former carriage or charges, and the expenses aforesaid, rendering the surplus (if any) of any of the proceeds and such of the animals or goods (if any) as remain unsold to the person entitled thereto.

(4) If a person on whom a demand for any carriage or other charge due from him has been made fails to remove from the railway within seven days any animals or goods which have been detained under sub-section (1), or any animals or goods which have remained unsold after a sale under sub-section (2), the Administration may sell the whole of them, and dispose of the proceeds of the sale as nearly as may be under the provisions of sub-section (3).

(5) Notwithstanding anything in the foregoing sub-sections, the Administration may recover by action in any competent Court any such carriage or other charge as aforesaid, or balance thereof.

15. (1) When any property has come into the possession of the Administration for carriage or otherwise, and is not claimed by the owner or other person appearing to the Administration to be entitled thereto, the Administration shall, if such owner or person is known, cause a notice to be served upon him, requiring him to remove the animals or goods.

(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the Administration may, after the expiration of ten days, sell the property as nearly as may be under the provisions of the foregoing section, rendering the surplus (if any) of the proceeds of the sale to any person entitled thereto.

16. If the consignee does not accept and remove the property within the time specified in any regulations framed under this Ordinance, or in the consignment notes, after the Administration has fulfilled its obligations to deliver or duly offered to fulfil the same, the Administration may relieve itself from further liability by placing the property in a suitable warehouse or store, when available, on account of the consignee, and giving notice thereof to him.

17. (1) The Administration is exonerated from liability for property by delivery thereof in good faith to any holder of a receipt or duplicate registered number given by or on behalf of the Administration therefor, specially endorsed or given to the party presenting it.

(2) When the Administration has given a receipt or other document substantially equivalent thereto, it may require its surrender or a reasonable indemnity against claims thereon before delivering the property.

(3) When any property or sale proceeds in the possession of the Administration are claimed by two or more persons, or the receipt given for the property is not forthcoming, the Administration may withhold delivery of the property or sale proceeds until the person entitled in its opinion to receive it has given an indemnity to the satisfaction of the Administration against the claims of any other person with respect to the property or sale proceeds.

18. (1) The owner or person having charge of any goods which are brought upon a railway for the purpose of being carried thereon, and the consignee of any goods which have been carried on a railway, shall, on the request of any railway servant appointed on this behalf by the Administration, deliver to such servant a declaration in writing, signed by such owner or person, or by such consignee, as the case may be, and containing the true weight, and such a description of the goods as may be sufficient to determine the rate and amount which the Administration is entitled to charge in respect thereof.

(2) If such owner, person or consignee refuses or neglects to deliver such a declaration, and refuses to open the parcel or package containing the goods, in order that their description may be ascertained, the Administration may—

- (a) in respect of goods which have been brought for the purpose of being carried on the railway, refuse to carry the goods, unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods, and when there are no facilities for weighing, upon the weight as estimated by the railway servants aforesaid; or,
- (b) in respect of goods which have been carried on the railway, charge a rate not exceeding such highest rate, and when there are no facilities for weighing, upon the weight as estimated by the railway servants aforesaid.

(3) If the weight of goods is materially understated, the Administration shall be entitled to charge on double the difference between the weight as stated and the actual weight.

(4) If a declaration delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, and which have been carried on the railway, the Administration may charge in respect of the carriage of the goods a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods.

(5) If any difference arises between a railway servant and the owner or person having charge or the consignee of any goods which have been brought to be carried, or have been carried on the railway, respecting the description or weight of goods, of which a declaration has been delivered under this section, the railway servant may detain and examine the goods.

(6) If it appears from the examination or weighing that the description or weight of the goods is different from that stated in the declaration delivered under sub-section (1), the person who delivered the declaration, or if that person is not the owner of the goods, then that person and the owner jointly and severally, shall be liable to pay to the Administration the cost of the detention and examination of the goods, and the Administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

19. (1) No person shall be entitled to take with him or to require the Administration to carry loaded firearms or any dangerous or offensive property upon a railway, or property so bulky that it would be unsafe for the railway to convey the same.

(2) No person shall take any such property with him upon a railway without giving notice of its nature to the stationmaster or other railway servant in charge of the place where he brings the property upon the railway, or shall tender or deliver any such property for carriage upon a railway without distinctly marking its nature on the outside of the package containing it, or otherwise giving notice in writing of its nature to the railway servant to whom he tenders or delivers it.

(3) Any railway servant may refuse to receive such property for carriage, and when such property has been so received, without

such notice as is mentioned in sub-section (2) having to his knowledge been given, may refuse to carry it or may stop its transit.

(4) If any railway servant has reason to believe any such goods to be contained in a package, with respect to the contents whereof such notice as is mentioned in sub-section (2) has not to his knowledge been given, he may cause the package to be opened for the purpose of ascertaining its contents.

(5) Nothing in this section shall be construed to derogate from Law No. 27 of 1896 (*i.e.*, the Explosives Law), or any law amending the same, or any rules made thereunder, and nothing in sub-sections (1), (3) and (4) shall be construed to apply to any property tendered or delivered for carriage by order or on behalf of the Government or to any property which an officer, soldier or member of a police force, or a person enrolled as a volunteer under Ordinance No. 33 of 1902, may take with him upon a railway in the course of his employment or duty as such.

LIABILITY OF ADMINISTRATION AS CARRIERS OF PROPERTY.

33. (1) Unless the consignor accompanies the property and retains control thereof, the Administration carrying property is liable therefor, from the time it accepts such property until it releases itself from liability by delivery of the property to the consignee, or by placing the same in a warehouse pursuant to § 16, for the loss or injury thereof, from any cause whatsoever, except—

- (a) an inherent defect, vice or weakness, or some action of the property itself;
- (b) the act of God;
- (c) accident or inevitable casualty;
- (d) the act of the King's enemies or other inevitable superior force;
- (e) the act of the law.

(2) The Administration is liable even in the cases excepted by sub-section (1), if its negligence exposes the property to the cause of the loss.

(3) The Administration is liable for delay only when it is caused by its want of ordinary care and diligence.

34. (1) A consignor or consignee, by accepting a receipt or written contract for carriage, assents to the rate of carriage and the time, place and manner of conveyance and delivery therein stated.

(2) Subject to sub-section (1), the liabilities and obligations of the Administration cannot be limited by general notice, but may be limited by special contract.

35. (1) The liability of the Administration under § 33 for the loss, destruction or deterioration of animals delivered to it, to be carried on a railway, shall not in any case exceed the amounts mentioned in the second schedule hereto annexed, unless the person sending or delivering them to the Administration caused them to be declared or declared them at the time of their delivery for carriage by the railway to be respectively of higher value than the amounts set out in the said schedule.

(2) Where such higher value has been declared, the Administration may charge in respect of the increased risk a percentage on the excess of value so declared over the respective sums mentioned in the schedule aforesaid.

(3) In every proceeding against the Administration for the recovery of compensation for the loss, destruction, or deterioration of any animal, the burden of proving the value of the animal, and where the animal has been injured, the extent of the injury, shall lie upon the person claiming the compensation.

36. (1) When any of the articles mentioned in the third schedule hereto annexed are contained in any parcel or package delivered to the Administration for carriage by railway, and the value of the articles in the parcel or package is £10 or more, the Administration shall not be responsible for the loss, destruction or deterioration of the parcel or package, unless the person sending or delivering the parcel or package to the Administration caused its value and contents to be declared, or declared them at the time of the delivery of the parcel or package for carriage by railway, and if so required by the Administration paid or engaged to pay a percentage upon the excess of the value so declared over the sum aforesaid, by way of compensation for the increased risk.

(2) When any package or parcel of which the value has been declared under sub-section (1) has been lost or destroyed, or has deteriorated, the compensation recoverable in respect of such loss,

destruction or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation.

(3) The Administration may make it a condition of carrying a parcel, declared to contain any article mentioned in the fifth schedule, that a railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.

37. In any action against the Administration for compensation for loss, destruction or deterioration of property delivered to it for carriage by railway, it shall not be necessary for the plaintiff to prove how the loss, destruction or deterioration was caused.

38. When property is carried over any line of the Administration as part only of the journey for which it is despatched and is lost, destroyed or deteriorated, the Administration shall be exonerated from liability for such destruction or deterioration, if it gives satisfactory proof that such loss, destruction or deterioration did not occur whilst the property was in charge of the Administration.

39. A person shall not be entitled to a refund of an overcharge in respect of property carried by railway, or to compensation for the loss, destruction or deterioration of property delivered to be so carried, unless his claim to the refund or compensation with full detailed information with reference thereto has been preferred in writing by him or on his behalf to the Administration within four months from the date of the delivery of the property for carriage by railway.

40. Notwithstanding anything in the foregoing provisions of this Ordinance, the Administration shall not be responsible for the loss, destruction or deterioration of any goods with respect to the description of which a declaration materially false has been delivered under sub-section (1) of § 18, or in respect of which a wrong or improper or insufficient address for delivery has been given, if the loss, destruction or deterioration is in any way brought about by the false declaration, or by giving a wrong or

improper or insufficient address, nor in any case for an amount exceeding the value of the goods, if such value were calculated in accordance with the description contained in the false account.

ACTIONS BROUGHT BY OR AGAINST THE ADMINISTRATION.

75. (1) No action shall be brought against the Administration to recover damages or compensation in respect of any claim for damages under this Ordinance, or against any railway servant for anything done or purporting to have been done by virtue of his office, service or employment, unless the same shall be commenced within twelve months after the act complained of was committed.

(2) No such action shall be commenced against the Administration or such person until one month at least after a notice in writing of the intended action shall have been served upon it or him, or left at its or his principal office or place of business, by the party intending to commence such action, or by his attorney or agent, in which notice the cause of action and details of claim and the Court in which the same is intended to be brought shall be clearly and explicitly stated, and upon the back thereof shall be endorsed the name and place of abode of the party so intending to sue, and also the name and place of business of the attorney or agent, if the notice is served by such attorney or agent.

(3) A notice under this section shall not be deemed invalid by reason of any minor defect or inaccuracy therein, unless the judge before whom the action is tried shall be of opinion that the defendant in the action has been prejudiced in his defence on the merits by such defect or inaccuracy.

76. (1) All actions to which the Administration is a party shall be brought in the name of or against the Commissioner.

(2) No writ of execution or attachment or process in the nature thereof shall be issued against the Commissioner in respect of any action or other proceeding brought or judgment or order given or made against him in his official capacity, nor shall any such writ or process be issued against any railway rolling stock or other railway property vested in or under the control and authority of the High Commissioner, but it shall be lawful for the Administration to pay out of railway funds such sum of money as shall be awarded to the plaintiff, applicant or petitioner, by the judgment or order of any competent Court.

SECOND SCHEDULE (see § 35 (1), above, p. 335).

Horses	...	...	£25.....	per head.
Mules	...	...	20.....	„ „
Cattle	...	...	12.....	„ „
Donkeys	...	...	8.....	„ „
Sheep and goats	...	...	1.....	„ „
Ostriches	...	...	12.....	„ „
Dogs	...	...	2.....	„ „
Other animals	...	...	2.....	„ „

THIRD SCHEDULE (see § 36 (1), above, p. 335).

Articles to be declared and insured.

- (a) gold and silver, coined or uncoined, manufactured or unmanufactured;
- (b) plated articles;
- (c) cloths and tissue and lace of which gold or silver forms part, not being the uniform or part of the uniform of an officer, soldier, sailor, police officer or person enrolled as a volunteer under the Volunteer Corps Ordinance, 1903, or of any public officer, British or foreign, entitled to wear uniform;
- (d) pearls, precious stones, jewellery;
- (e) watches, clocks and timepieces of every description;
- (f) Government securities;
- (g) Government stamps;
- (h) bills of exchange, promissory notes and orders or other securities for payment of money;
- (i) maps, writings and title deeds;
- (j) paintings, engravings, lithographs, photographs, carvings and other works of art;
- (k) art pottery and all articles made of glass, china or marble;
- (l) silks in a manufactured or unmanufactured state and whether wrought up or not wrought up with other materials;
- (m) shawls;
- (n) lace, furs and feathers;
- (o) ivory, ebony and sandalwood;
- (p) musk, sandalwood oil and other essential oils used in the preparation of perfumes;
- (q) musical and scientific instruments;
- (r) any article of special value which the High Commissioner may by notification in the *Gazette* add to this schedule.

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